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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORDS OF THE 957th TO 984th MEETINGS

Held at the Palais des Nations, Geneva,
from 1 to 19 March 1993

Volume I

PUBLIC MEETINGS*

Chairman: Mr. VALENCIA RODRIGUEZ

Rapporteur: Mr. BANTON

The list of members attending the session may be found in the report of the Committee to the General Assembly (Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18 (A/48/18), chap. I, paras. 5-8).

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* The Committee also held six closed meetings, the summary records of which (CERD/C/SR.961/Add.1, 965, 974, 976/Add.1, 977 and 978), contained in document CERD/C/SR.957-984 (Vol. II), were issued in restricted distribution.

CONTENTS

Page

957th meeting

Monday, 1 March 1993, at 11 a.m.

Opening of the session 14

Statement by Mr. Ibrahima Fall, Assistant Secretary-General for Human Rights 14

Adoption of the agenda (item 1 of the provisional agenda) . . . 18

Organization of work 18

958th meeting

Tuesday, 2 March 1993, at 10.25 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4):

Eleventh and twelfth periodic reports of Ukraine 22

959th meeting

Tuesday, 2 March 1993, at 3.10 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (continued):

Eleventh and twelfth periodic reports of Ukraine (continued) 34

960th meeting

Wednesday, 3 March 1993, at 10.25 a.m.

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) 46

Action by the General Assembly at its forty-seventh session (agenda item 2):

(a) Annual report submitted by the Committee on the Elimination of Racial Discrimination under article 9, paragraph 2, of the Convention (General Assembly resolution 47/79)

CONTENTS (continued)

Page

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (General Assembly resolution 47/111) 46

961st meeting

Wednesday, 3 March 1993, at 3.20 p.m.

Organization of work (continued) 58

962nd meeting

Thursday, 4 March 1993, at 10.10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (continued):

Tenth periodic report of Algeria 68

963rd meeting

Thursday, 4 March 1993, at 3.10 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (continued):

Tenth periodic report of Algeria (continued) 80

Action by the General Assembly at its forty-seventh session (agenda item 2) (continued):

(a) Annual report submitted by the Committee on the Elimination of Racial Discrimination under article 9, paragraph 2, of the Convention (General Assembly resolution 47/79)

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (General Assembly resolution 47/111) 84

CONTENTS (continued)

Page

964th meeting

Friday, 5 March 1993, at 10.20 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (continued):

Eighth periodic report of Qatar 90

965th meeting (Second Part)

Friday, 5 March 1993, at 5.25 p.m.

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) (continued):

Draft general recommendation on non-citizens 102

966th meeting

Monday, 8 March 1993, at 10.25 a.m.

Preparatory activities relating to the World Conference on Human Rights (agenda item 8) 108

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) (continued):

Draft general recommendation on non-citizens (continued) . 115

967th meeting

Monday, 8 March 1993, at 3.10 p.m.

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) (continued):

Draft general recommendation on non-citizens (continued) . 120

Draft general recommendation on discrimination in fact . . 125

CONTENTS (continued)

Page

968th meeting

Tuesday, 9 March 1993, at 10.25 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (continued):

Eighth periodic report of the Sudan 134

969th meeting

Tuesday, 9 March 1993, at 3.20 p.m.

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) (continued):

Draft general recommendation on the training of law enforcement officials in the protection of human rights . . 148

Draft general recommendation on non-citizens (concluded) . 150

Draft general recommendation on public life 151

Draft general recommendation on segregation 156

Draft general recommendation on effectiveness 161

970th meeting

Wednesday, 10 March 1993, at 10.15 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (continued):

Eighth periodic report of the Sudan (continued) 166

971st meeting

Wednesday, 10 March 1993, at 3 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (continued):

Eighth periodic report of the Sudan (continued) 176

Eleventh and twelfth periodic reports of Ecuador 178

CONTENTS (continued)

Page

972nd meeting

Thursday, 11 March 1993, at 10.15 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (continued):

Eleventh and twelfth periodic reports of Ecuador (continued) 194

Seventh periodic report of the Central African Republic 199

Other business 204

Second Decade to Combat Racism and Racial Discrimination (agenda item 7) 205

973rd meeting

Thursday, 11 March 1993, at 3.10 p.m.

Second Decade to Combat Racism and Racial Discrimination (agenda item 7) (continued) 208

974th meeting (Second Part)

Friday, 12 March 1993, at 11 a.m.

Action by the General Assembly at its forty-seventh session (agenda item 2) (continued):

(a) Annual report submitted by the Committee on the Elimination of Racial Discrimination under article 9, paragraph 2, of the Convention (General Assembly resolution 47/79)

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (General Assembly resolution 47/111) 222

Report of the Working Group on Prevention and Emergency Situations 222

CONTENTS (continued)

Page

975th meeting

Friday, 12 March 1993, at 3.20 p.m.

Action by the General Assembly at its forty-seventh session (agenda item 2) (continued):

(a) Annual report submitted by the Committee on the Elimination of Racial Discrimination under article 9, paragraph 2, of the Convention (General Assembly resolution 47/79)

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (General Assembly resolution 47/111) 234

Report of the Working Group on Prevention and Emergency Situations (continued) 234

976th meeting (First Part)

Monday, 15 March 1993, at 10.25 a.m.

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) (continued):

Draft general recommendation on effectiveness (continued) . 246

Draft general recommendation on State policies 248

Draft general recommendation on the succession of States 250

978th meeting (Second Part)

Tuesday, 16 March 1993, at 11.55 a.m.

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) (continued):

Draft general recommendation on the succession of States (concluded) 254

Draft general recommendation on the implementation of article 9 of the Convention 254

CONTENTS (continued)

Page

979th meeting

Tuesday, 16 March 1993, at 3.15 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (continued):

Fifth, sixth and seventh periodic reports of Jamaica . . . 260

Action by the General Assembly at its forty-seventh session (agenda item 2) (continued):

(a) Annual report submitted by the Committee on the Elimination of Racial Discrimination under article 9, paragraph 2, of the Convention (General Assembly resolution 47/79)

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (General Assembly resolution 47/111) 263

Report of the Working Group on Prevention and Emergency Situations (concluded) 263

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) (continued):

Draft general recommendation on the establishment of national human rights commissions 267

Draft general recommendation on training of law enforcement officials in the protection of human rights (concluded) 270

980th meeting

Wednesday, 17 March 1993, at 10.20 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (continued):

Fourth periodic report of Chad 274

Initial report of Mozambique 282

CONTENTS (continued)

Page

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) (continued):

Draft general recommendation on discrimination in fact (continued) 286

Draft general recommendation on the implementation of article 4 of the Convention 286

981st meeting

Wednesday, 17 March 1993, at 3.15 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (continued):

Twelfth periodic report of Poland 290

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) (continued):

Draft general recommendation on article 1 (1) of the Convention (concluded) 297

Draft general recommendation on the implementation of article 4 of the Convention (continued) 301

Draft general recommendation on the implementation of article 9 of the Convention (continued) 303

982nd meeting

Thursday, 18 March 1993, at 10.15 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (continued):

Twelfth periodic report of Poland (continued) 306

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) (continued):

Draft general recommendation on the implementation of article 4 of the Convention (concluded) 313

CONTENTS (continued)

Page

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (continued):

Draft concluding observations concerning reports of States parties 313

Tenth periodic report of Algeria (continued) 313

983rd meeting

Thursday, 18 March 1993, at 3.10 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (agenda item 4) (concluded):

Draft concluding observations concerning reports of States parties (concluded) 320

Tenth periodic report of Algeria (concluded) 320

Seventh periodic report of the Central African Republic (concluded) 320

Eleventh and twelfth periodic reports of Ecuador (concluded) 321

Eighth periodic report of Qatar (continued) 321

Eighth periodic report of the Sudan (concluded) 322

Eleventh and twelfth periodic reports of Ukraine (concluded) 324

Eighth periodic report of Qatar (concluded) 327

Fifth, sixth and seventh periodic reports of Jamaica (concluded) 327

Fourth periodic report of Chad (concluded) 328

Initial report of Mozambique (concluded) 328

Twelfth periodic report of Poland (concluded) 330

Organization of work (concluded) 330

CONTENTS (continued)

Page

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) (continued):

Draft general recommendation on the implementation of article 9 of the Convention (continued) 331

Draft decisions by the Committee 333

984th meeting

Friday, 19 March 1993, at 10.15 a.m.

Draft decisions by the Committee (concluded) 340

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) (continued):

Draft general recommendation on the implementation of article 9 of the Convention (concluded) 343

Other business (continued) 344

Second Decade to Combat Racism and Racial Discrimination (agenda item 7) (concluded) 345

Other business (concluded) 345

Submission of reports by States parties under article 9, paragraph 1, of the Convention (agenda item 3) (concluded):

Draft general recommendation on the establishment of national human rights commissions (concluded) 346

Action by the General Assembly at its forty-seventh session (agenda item 2) (concluded):

(a) Annual report submitted by the Committee on the Elimination of Racial Discrimination under article 9, paragraph 2, of the Convention (General Assembly resolution 47/79)

(b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights (General Assembly resolution 47/111) 347

Relations with other bodies 347

CONTENTS (continued)

Page

Report on the technical meeting of experts on minorities 350

Report on the work of the Working Group on Indigenous Populations 352

Closure of the session 353

CERD/C/SR.957
26 March 1993

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 957th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 1 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 11 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the forty-second session of the Committee on the Elimination of Racial Discrimination and welcomed the participants. He was glad that efforts to organize the current three-week session had been successful and expressed his gratitude to the Assistant Secretary-General for Human Rights, who had done much to make it possible. He was also grateful to the Third Committee, which had recommended that the Committee's work should, in future, be financed from the United Nations regular budget, and to the General Assembly, which had adopted a decision to that effect at its forty-seventh session. A return to a normal schedule of sessions should enable the Committee to fulfil its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, something it had not been able to do properly for some time. That was a very welcome development at a time when the situation regarding racial discrimination in the world was not improving and racism was even recurring in many areas. In such a situation, the Committee must not remain inactive and, now that its working conditions had improved, it must spare no effort to ensure that the Convention was respected.

STATEMENT BY MR. IBRAHIMA FALL, ASSISTANT SECRETARY-GENERAL FOR HUMAN RIGHTS

2. Mr. FALL (Assistant Secretary-General for Human Rights), welcoming the members of the Committee, said that the new session was the beginning of an era of hope for the Committee. He recalled that, at its forty-seventh session, the General Assembly had adopted the amendment to the funding provisions of the Convention adopted by the Fourteenth Meeting of States Parties. If two-thirds of the States parties accepted the amendment by the end of 1993, the Committee's work could be financed from the regular budget from the financial year 1994-1995 onwards. In the meantime, the General Assembly had asked the Secretary-General to take steps to ensure that the Committee could meet as usual. Sufficient financial resources had been made available for the current session and the August session would take place according to the normal schedule.

3. Various United Nations bodies had taken measures to combat the resurgence of racism and violence against minorities. In its resolution 47/80, the General Assembly had condemned the practice of "ethnic cleansing" and the Security Council had just unanimously decided in resolution 808 (1993) to set up an international tribunal to try persons alleged to have committed serious violations of international humanitarian law in the territory of the former Yugoslavia since 1991.

4. At its preceding session, the General Assembly had reaffirmed the high priority it gave to the Third Decade to Combat Racism and Racial Discrimination and called on the Commission on Human Rights to propose activities for the Decade. The General Assembly had also adopted the

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and had asked the human rights treaty bodies to give the necessary attention to the Declaration.

5. He recalled that 1993 had been declared the International Year for the World's Indigenous People with the theme "a new partnership". The General Assembly had asked all United Nations bodies to support the aims of the International Year. It had also asked the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to complete the draft universal declaration on the rights of indigenous peoples in 1993, so that the Commission on Human Rights could consider the draft at its fiftieth session in 1994. The previous week, the Commission, which was currently in session, had held a special meeting to celebrate the International Year, when it had heard a statement by Ms. Rigoberta Menchu, the winner of the 1992 Nobel Peace Prize.

6. The Commission was currently considering a recommendation by the Sub-Commission on Prevention of Discrimination and Protection of Minorities that it should appoint a special rapporteur on contemporary forms of racism, racial discrimination and xenophobia. If such a special rapporteur were appointed, he would certainly have a close and constructive relationship with the Committee.

7. The fourth meeting of persons chairing the human rights treaty bodies had been held in Geneva from 12 to 16 October 1992; the Committee would certainly be informed in detail of the conclusions, recommendations and suggestions arising from the meeting and then decide what follow-up action to take. The General Assembly had requested Mr. Philip Alston, Chairman of the Committee on Economic, Social and Cultural Rights, to update his study on possible long-term approaches to enhancing the operation of United Nations human rights treaty bodies. An interim report on that subject would be submitted to the World Conference on Human Rights, to be held at Vienna in June 1993. In that connection, he welcomed the contribution the Committee had already made to the preparatory process for the Conference. The Committee might wish to make final recommendations to the Preparatory Committee, which was due to hold its fourth and last session in Geneva from 19 to 30 April.

8. As a result of the rise of racism and intolerance, all United Nations human rights bodies had to react swiftly and effectively. The Committee had an essential role to play and it should perhaps consider ways of adapting its structures and procedures to the changing situation. The Centre for Human Rights would fully support it in that task. He personally would follow the Committee's work closely and wished it every success.

9. Mr. BANTON thanked the Under-Secretary-General for Human Rights for his statement, in which he had referred to the fourth meeting of persons chairing the human rights treaty bodies. The report of that meeting would certainly be discussed at the Committee's current session. He hoped that, during the discussion, the Under-Secretary-General and some of his staff could answer questions about the proposal to establish a resource centre for the members of the treaty bodies; that proposal had originally been made at the second meeting of chairpersons and had been repeated in the report of the fourth

meeting. One of the first questions that arose was that of the office space, documentation and staff which would be needed for such a centre and the costs involved. Secondly, the proposal should be discussed with the Library of the United Nations Office at Geneva. The Library seemed to be intended mostly for researchers and diplomats and was not used to working with the treaty bodies, perhaps because they had not told it clearly enough what their needs were. Thirdly, the proposal for the establishment of a resource centre might be considered too expensive, but it might then be possible to consider a smaller scale project, based on the services the Library could provide.

10. Mr. SHERIFIS welcomed the new provisions which had been adopted on the Committee's meetings and which should make it possible for the Committee to perform the tasks entrusted to it by the Convention. The Secretary-General's assurances for the future were also encouraging. However, it was unfortunate that the decision about the holding of the current session had been taken so late and that some members of the Committee would not be able to be present, while others would not be able to stay for three weeks. The lateness of the announcement had also affected preparations for the sessions. He was glad to learn that future sessions were to be held according to schedule and thanked everyone who had helped make the necessary arrangements, particularly the Assistant Secretary-General for Human Rights and his staff.

11. The Assistant Secretary-General had referred to discrimination against minorities. Naturally, all members of the Committee hoped that such discrimination would soon be eliminated. For many years, United Nations bodies had been concerned by the discrimination practised by a minority against the majority in a certain country; it was gratifying that the situation in that country seemed to be moving in the right direction and it was to be hoped that such discrimination would disappear completely. All members of the Committee were also strongly opposed to "ethnic cleansing", regardless of where, by whom and against whom it was practised. Although he had at one time been his country's ambassador in Yugoslavia, he could not say which was the majority and which was the minority in Bosnia. He had personally been the victim of "ethnic cleansing" in his own country some 20 years before, as a result of events which were still familiar to the international community. The question of "ethnic cleansing" was certainly of interest to the Commission and came within its terms of reference. He agreed with Mr. Fall that that practice was not only unacceptable under the Charter of the United Nations and international human rights instruments, but also quite simply contrary to all humanity.

12. Ms. SADIQ ALI, thanked Mr. Fall for his comprehensive statement and urged him to prevail upon the Swiss authorities to request Swiss embassies to remove the many obstacles experts encountered when trying to obtain a visa and, in particular, to grant such visas without undue delay rather than at the last minute. In her view, the way the Swiss embassy in India had treated her constituted racial discrimination.

13. Mr. YUTZIS welcomed the fact that the Committee would be able to meet regularly and that the General Assembly had decided that the human rights treaty bodies would be financed through the United Nations regular budget. He hoped that Mr. Fall might be able to help speed up that change.

14. He also endorsed Mr. Banton's views about the need to establish a resource centre at the United Nations Office at Geneva to facilitate the experts' work.

15. Mr. SHAHI said he hoped that collaboration between the Committee and the Under-Secretary-General for Human Rights would be strengthened and that the Under-Secretary-General would make proposals for the purpose, as had been suggested by the Secretary-General, of empowering human rights treaty bodies to bring massive violations of human rights to the attention of the Security Council and to formulate recommendations for action.

16. He agreed with Mr. Banton that a human rights resource centre should be established. The Committee also had to decide how it would contribute to the World Conference on Human Rights, to be held in June 1993. He noted that the participants in the seminar on human rights questions for the Asia and Pacific region, held recently in Djakarta, had proposed that a regional body and national commissions should be set up to monitor the implementation of human rights instruments. The Committee would have to take a decision on that proposal. In his view, the members of such national commissions should be appointed by Governments and their independence should be guaranteed. In particular, they should not be paid by the State. With regard to the World Conference on Human Rights, the Committee would also have to consider the question of model human rights legislation and the ways of adapting those models to the situation in each country.

17. He was concerned by Ms. Sadiq Ali's statement and hoped that the United Nations would call on the Swiss authorities to ensure that persons working for bodies with headquarters in Geneva obtained their visas more rapidly.

18. Mr. SHERIFIS said he did not think that not receiving a salary was a guarantee of independence. What really mattered was that the person concerned should be honest and objective.

19. Mr. SHAHI said that, while the situation might vary from one country to another, in Pakistan at least, a national human rights commission composed of persons recognized for their competence would be more credible if those persons did not receive a salary.

20. Mr. van BOVEN said he hoped that the Committee would think about how it might carry out its work more effectively, including breaking out of its relative isolation and strengthening its cooperation with other United Nations human rights bodies.

21. The previous year, the representative of a State Party had reproached the Committee for going beyond its terms of reference by discussing ethnic conflicts in that country. The Committee might therefore wish to draft a general recommendation in which it would define its terms of reference on the basis of the provisions of the Convention.

22. As the only treaty body authorized to consider the situation of indigenous populations, the Committee should, on the occasion of the International Year for the World's Indigenous People, spell out its responsibilities with regard to those populations.

23. Mr. FALL (Assistant Secretary-General for Human Rights) apologized to the members of the Committee for the hasty way in which the session had been convened. Although it had, in fact, only quite recently received authorization to organize the session, the Secretariat had not wanted to postpone it until August. In future, the Secretariat would try to facilitate the granting of visas by the Swiss authorities.

24. Preparations for the World Conference on Human Rights were in the final stages and all recommendations were welcome. The agenda of the Conference had been decided and all chairpersons and rapporteurs of the human rights treaty bodies would be invited to participate in the fourth and last session of the Preparatory Committee of the Conference.

25. He took note of the comments by Mr. Banton and Mr. Yutzis on the working conditions of those bodies and, in particular, the possible establishment of a resource centre. It was true that the Centre for Human Rights itself did not have a resource centre, even though it provided technical assistance to States wishing to set up centres of that kind. The problem was being discussed at the highest level. The Secretary-General had agreed in principle to the installation of a resource centre on the ground floor of Building C. However, that would probably not happen in the immediate future.

26. He reminded the Committee that the Secretariat was available to answer any questions it might have.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CERD/C/241)

27. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee decided to adopt the provisional agenda.

28. It was so decided.

ORGANIZATION OF WORK

29. Ms. KLEIN (Representative of the Secretary-General) announced to the Committee the names of the experts who had informed the Secretariat that they would arrive late.

30. Mr. LECHUGA HEVIA asked whether there had been any confirmation of the presence of the States parties whose reports were to be considered under agenda item 4.

31. Ms. KLEIN (Representative of the Secretary-General) said that Ukraine had announced that it would send a delegation to the Committee. The United Kingdom of Great Britain and Northern Ireland and the Republic of Korea had requested that the consideration of their reports should be postponed until a later session. Afghanistan and Peru, whose reports were long overdue had requested the Committee not to continue, as it had decided to do, its review of the implementation of the Convention in their territories on the basis of their last reports and had announced that new reports were being prepared. The Sudan had just submitted, very late, a report which would be distributed that morning as document CERD/C/222/Add.1 and the representative of Sudan was currently in Geneva. The Committee therefore had to decide when it would be able to consider the report of Sudan - either that week or the following week, on 9 March.

32. Mr. van BOVEN recalled that, at its August session, the Committee had requested the immediate submission of the reports of three countries: Burundi, Papua New Guinea and Rwanda. Had those reports been received?

33. Ms. KLEIN (Representative of the Secretary-General) said that, although those reports had been requested for 1 March, they had not been received.

34. The CHAIRMAN said that the Permanent Mission of Guatemala had requested that the report of Guatemala should be considered at the next (forty-third) session of the Committee.

35. Mr. YUTZIS said that, in the light of the information just provided, the Committee had to rearrange its programme of work completely. He proposed that the Bureau should meet to decide on the new organization of work so that the members of the Committee could be informed of it that afternoon.

36. The CHAIRMAN said that he endorsed the proposal and suggested that any member of the Committee wishing to assist in that task should join the members of the Bureau who were present.

The meeting rose at 12.20 p.m.

CERD/C/SR.958
13 April 1993

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 958th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 2 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4)

Eleventh and twelfth periodic reports of Ukraine (CERD/C/197/Add.5 and CERD/C/226/Add.3)

1. The CHAIRMAN said that the Committee had before it the eleventh periodic report of Ukraine (CERD/C/197/Add.5) and the twelfth periodic report of that country (CERD/C/226/Add.3).

2. At the invitation of the Chairman, Mr. Burchak and Mr. Reva (Ukraine) took places at the Committee table.

3. Mr. BURCHAK (Ukraine) expressed his country's support for the Committee's work and said that he wished to provide information on the legislation adopted in Ukraine during the seven months which had elapsed since its last report.

4. Since proclaiming its independence, one of the main tasks to which Ukraine had devoted itself had been to develop a legal system in conformity with international standards guaranteeing individual rights and freedoms. The Ukrainian Parliament had thus declared that all laws adopted by the State to which Ukraine was the successor would remain in force as long as they were not in contradiction with the new legislation. In addition, all obligations entered into by Ukraine after ratification by the Parliament became an inalienable part of the State's domestic law. All the international commitments inherited from the former Soviet Union were also part of domestic law.

5. In respect of the new laws on the implementation of article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination, the Act on the Rehabilitation of Victims of Political Repression in Ukraine (CERD/C/226/Add.3, part II) had been supplemented by provisions which increased the amount of compensation paid to victims and broadened the scope of the Act's application to persons living in Ukraine who had been subjected to political repression outside the limits of the territory of Ukraine.

6. Since the date of Ukraine's last report, 122 acts and 336 decrees or legislative texts concerning the Convention had been adopted.

7. Article 5 of the Act relating to the security services, the successors, as it were, to the KGB in the former Soviet Union, provided that the activities of those services had to be carried out with due respect for individual rights and freedoms; that the bodies and staff connected with those services were bound to respect human dignity; that any disclosure of information on the private lives of citizens was prohibited; and that any restriction on individual rights and freedoms was intolerable and would incur the offender's criminal responsibility.

8. In addition, article 3 of the Act of 23 April 1991 on Freedom of Conscience and Religious Organizations (CERD/C/226/Add.3, part II) guaranteed that every Ukrainian citizen had the right to freedom of conscience. Article 4 provided that Ukraine's citizens were equal before the law and possessed equal rights in all spheres of economic, political, social and cultural life regardless of their attitude towards religion.

9. Article 4 of the Act on Citizen's Associations prohibited any organization in Ukraine whose purpose was propaganda for war, violence, cruelty, fascism or neofascism; any organization whose purpose was to incite religious or national hatred; and any organization whose purpose was to restrict or limit generally recognized human rights. Under article 7 of that Act, refusing to grant membership of, or excluding anyone from, an organization on the grounds of nationality was prohibited.

10. There were currently 21 political parties in Ukraine. When they were registered, their policy was carefully scrutinized.

11. In June 1992, Ukraine had adopted the Act on National Minorities in Ukraine, article 1 of which provided that Ukraine guaranteed citizens of the Republic, regardless of their national origin, equality of political, social, economic and cultural rights and freedoms. The drafting of the Act had given rise to problems because it was the national practice of many citizens from the republics of the former Soviet Union to have a first name, but not a surname. The Act on National Minorities therefore included a provision according to which the passports of citizens belonging to that category showed only the first name of the persons concerned.

12. The Act of 26 June 1992 on emergency situations applied only where a disturbance of public order threatened the life and health of citizens and any restrictions on rights and freedoms had to be clearly spelled out in the legislation.

13. On 26 November 1992, Ukraine had also adopted the Media Act, article 3 of which prohibited the dissemination of slander or libel through the media. That same article prohibited any publications whose purpose was to incite national or racial hatred. Any organization which violated that provision was liable to criminal prosecution.

14. The Employment Act, completed in October 1992, stipulated that any discrimination in hiring on the basis of nationality, religion or other factors was inadmissible.

15. Under the Act on alternative forms of service (CERD/C/226/Add.3, part II), persons whose religious convictions were incompatible with military service were given the option of serving their country in a different way.

16. The Act on Citizenship of Ukraine (CERD/C/226/Add.3, part II) gave persons who had been born in Ukraine, but who had emigrated, for whatever reason, the possibility of reclaiming their Ukrainian nationality or of obtaining it through a simplified procedure. The Act had been amended in January 1993 by an extension of the time limits.

17. Through judicial reform, a constitutional court had been set up to rule on the constitutionality of the laws and other legislative acts. Under the Constitution, the Parliamentary Ombudsman for Human Rights was vested with the power to refer matters to the Constitutional Court where the State had interfered with the constitutional rights and freedoms of citizens. The Constitutional Court was also competent to consider disputes relating to the territorial jurisdiction of the Constitutions of Ukraine and Crimea.

18. Despite all the legislative measures adopted by Ukraine, human rights violations on national or religious grounds and conflicts between national groups did occur at times. The explanation was that, in the past, those in power, in carrying out their anti-religious policy, had caused the destruction of many churches, which had constituted cultural treasures. That had given rise to some animosity between the various religious faiths, which had been prohibited until recently and were competing for the remaining religious sites. In addition, the opening of a Russian school had recently been prohibited in the Kiev region, despite the existence of a substantial Russian community. The complex situation in which Ukraine currently found itself, characterized by hyperinflation and a dramatic drop in the standard of living, was creating tensions which, fired by national, religious and other factors, might give rise to conflicts or human rights violations. The Ukrainian Parliament, President, Government and local authorities were trying to reduce frictions between nationalities, so that, for the time being, Ukraine was free from large-scale open conflict between different groups.

19. Mr. RECHETOV, country rapporteur, thanked the Ukrainian authorities for having already submitted a detailed twelfth periodic report, which described the enormous changes in the country since its recent independence. He also noted that, despite the conditions under which the current session had been convened, the Ukrainian authorities had been able to send a high-level delegation headed by Mr. Burchak, one of Ukraine's finest legal specialists.

20. First of all, the report reflected changes which were evidence of Ukraine's intention to break with the past. After reading the report, it became clear that the country had adopted a new political and economic model and was turning its back on a totalitarian past imposed on it and on the other republics of the former USSR. Nevertheless, some of the information provided did not fall within the Committee's competence and should have been submitted to the Human Rights Committee or other bodies. With time, the Ukrainian legal specialists would naturally have a better grasp of the precise scope of the Committee's mandate.

21. He would limit his observations to the twelfth report (CERD/C/226/Add.3) and not spend time on the previous report (CERD/C/197/Add.5), which had also been submitted for the Committee's consideration, since the latter document tended to reflect the past. He noted from part I of the twelfth report, which discussed the initiatives taken by Ukraine at the international level, that Ukraine intended to become a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social

Charter and he welcomed that fact. He also noted that Ukraine had recognized the competence of the Committee under article 14 of the Convention. He welcomed the role played by the representatives of Ukraine in the Commission on Human Rights.

22. Page 5 of the report stated that, according to the preamble to the Act on the operation of international treaties on the territory of Ukraine, adopted in 1991, international treaties ratified by Ukraine became an inalienable part of Ukrainian domestic law and were implemented in the manner envisaged for national laws. He therefore requested the Ukrainian delegation to confirm whether the provisions of the Convention were directly applicable. For example, could a Ukrainian judge invoke the Convention during legal proceedings?

23. The demographic information provided on page 5 was not always clear. In future, it would be better to present such information in table form. He noted on page 6 that the number of Jews was decreasing. Yet, the newspaper Izvestia of 20 February 1993 had reported a revival of the Jewish culture, which included a commemoration of the fiftieth anniversary of the Babi Yar massacre, whose victims had been of various nationalities, but predominantly Jewish; the creation of Jewish social and cultural organizations in more than 70 Ukrainian towns; the opening of Jewish schools; and the publication of newspapers and production of films in Yiddish. The Academy of Sciences currently had an institute of Jewish culture and an international Salomon University had opened in Kiev. In his view, all those activities deserved support.

24. In respect of the German population of Ukraine, referred to on page 6, he recalled that a plan to transfer Russian Germans to Ukraine had been announced and that President Kravchuk had envisaged the establishment of German colonies on Ukrainian territory. He wished to know whether that plan was being implemented.

25. Part II of the report contained interesting information on articles 2 to 7 of the Convention. He noted with particular interest what had been said about the re-establishment of religious life and the creation of synagogues, Muslim religious centres and Protestant churches. Part II also dealt with the problems of Crimea and the regions bordering on the Republic of Moldova. In the past, Crimea had been part of Czarist Russia and, in 1944, a large number of Tatars living there had been forced into exile. That was a criminal act, equivalent to genocide, committed on the pretext that the Tatars had collaborated with the German occupants. The exodus had upset the balance of the Crimean demographic structure. So that the Committee could better grasp the breadth of the problem, he requested the Ukrainian delegation to provide demographic data on the size of each population group in Crimea in 1920, 1940 and later years.

26. The report affirmed that Ukraine was pursuing a clear national policy based on respect for human rights and the rights of ethnic minorities and on the recognition of existing borders. One could only endorse such a policy, which should enable the country to solve its problems, including that of Crimea. In his view, Crimea should be recognized as part of Ukraine: any

attempt to call that fact into question was potentially dangerous. The desire of the Tatars in Crimea to return to their traditional territory should be respected and any delays, which would have a destabilizing effect, should be avoided. A legal and civilized solution to that problem had to be found; and it had to avoid violence and be based on respect for the rights of the population concerned. He noted that an Act on the status of the Crimean Autonomous Republic had been adopted by the Ukrainian Parliament. He would like to know whether the Ukrainian delegation could provide more details on the content of the Act.

27. Page 12 of the twelfth periodic report of Ukraine also dealt with the problem of the territory of Moldavian Pridnestroyve. That territory had been recognized as part of the Republic of Moldova. However, there were also extremist groups in Pridnestroyve and persons in the Republic of Moldova who were in favour of unification with Romania. If the Republic of Moldova was in future to become part of another State, what effect might that change have on the situation in Pridnestroyve?

28. The position of Ukraine with regard to apartheid was indicated in the section of the report relating to article 3. Still, it would be appropriate to have more detailed information about the country's attitude with regard to the sanctions against South Africa. The issue had lately become a bit ambiguous: it was difficult to know to what extent the international community still endorsed the sanctions or whether it wanted them to be lifted.

29. Article 66 of the Ukrainian Criminal Code, cited in connection with article 4 of the Convention, was concerned with disregard of the equality of citizens' rights on the grounds of their race, nationality or attitude to religion. In that respect, the Ukrainian Criminal Code was close to the Russian Criminal Code; however, both instruments were somewhat inadequate by comparison, for example, with the corresponding provisions of the criminal codes of the Nordic countries, which were much more specific and invoked much more frequently. The report mentioned only one case which had given rise to a conviction in Ukraine, in 1990. According to an article he had read in Izvestia, criminal proceedings had been instituted in Kiev in response to the recent dissemination of antisemitic publications. It would be helpful for the Committee to follow that kind of situation closely. The Committee would also like some clarifications on the legislation applicable to organizations which incited racial hatred.

30. In the section of the report dealing with articles 5 and 6, page 18 mentioned that the draft Constitution under consideration provided for the prohibition of all forms of racial discrimination. The report also stated on page 20 that the Act on National Minorities in Ukraine, which had already been adopted, guaranteed those minorities respect for their historical and present-day places of residence. It mentioned that membership in any particular community was a matter of freedom of conscience, which corresponded to the Committee's position on that matter. The Act on National Minorities also guaranteed the cultural autonomy of those minority groups. The Act on Citizenship of Ukraine, referred to on page 23, made the right to citizenship an inalienable human right, proclaiming that no one could be deprived of his citizenship. Under that Act, any person living in Ukraine at the time of the

entry into force of the Act, whatever his origin, was a Ukrainian citizen. That provision was entirely in conformity with international law. In respect of dual citizenship, referred to on page 23, he noted that, in the past, the tendency in many countries had been to do away with dual citizenship, but greater tolerance was now the rule. He would nevertheless like to know how that liberal provision was reflected in Ukrainian positive law.

31. He was also aware that Ukraine had long had a liberal tradition with regard to linguistic matters. He had noticed in travelling in the Ukrainian Carpathian region that six or seven languages were spoken there, including Hungarian, Polish and Romanian. A great effort was currently under way to promote the languages spoken in Ukraine; perhaps the Ukrainian delegation could describe that effort by providing details on television, theatre and other programmes offered in the various languages. He hoped that future reports of Ukraine would be even more detailed and that, in the meantime, Ukraine would have overcome its current difficult economic situation and have given further affirmation to its noble civilization, its culture and its respect for human rights.

32. Mr. LECHUGA HEVIA thanked the Ukrainian delegation for its frankness and asked whether Ukraine was in favour of maintaining sanctions against South Africa and whether it had diplomatic relations with that country. Among the 20 or so officially registered political parties, some did not act in practice according to the principles they proclaimed in public; he therefore wished to know whether the discrepancy between words and actions concerned racial discrimination.

33. Mr. BANTON said that the disappearance of the Soviet Union had perhaps sapped the spirit of solidarity, which had provided some protection against nationalism, and that, consequently, certain minorities might feel more threatened than in the past. The Government should therefore pay attention to that problem.

34. Referring to article 2 (1) of the Convention, he said that the policy adopted by a State party with regard to the elimination of racial discrimination should be set down in a clear and comprehensible written document, which should be brought to the attention of the public and of the persons responsible for the implementation of the policy. Furthermore, the Government should ensure that the various State bodies involved in implementing the policy coordinated their activities and did their jobs properly. The policy should be periodically reviewed and changed as necessary.

35. Ukraine should specify in its next report whether the rule of proportionality was respected in various areas. For example, it would be interesting to know whether a minority representing a certain percentage of the total population would receive the same percentage of the total number of scholarships granted in the country.

36. Persons who believed that their rights had been violated and thus applied to the Parliamentary Ombudsman for Human Rights, mentioned in paragraph 2 on page 15 of the report, should have both the support of non-governmental

organizations and legal protection so that they would not be subject to reprisals by high-level officials or employers against whom they were bringing a complaint.

37. In respect of article 2 (1) (e) of the Convention, he asked what the Ukrainian Government was doing to encourage integrationist multi-racial organizations and movements. He would also like to know whether it was true that Tatars who had returned to Crimea had been arrested without any grounds and brutalized and that the police and the courts had not taken any measures against such actions.

38. According to the tenth paragraph on page 15, the Procurator's Office was empowered to supervise the lawfulness of acts by officials that affected citizens' rights or freedoms. Would the Procurator's Office intervene if those officials did not take measures they were supposed to take, since that could be as serious as committing an unlawful act?

39. Did the fact that Crimea's Supreme Council had declared the independence of the Republic of Crimea (penultimate para., p. 11) mean that the Procurator General of Ukraine had lost any right to monitor the activities of judges in Crimea?

40. Where could citizens obtain information on their rights, on the lawfulness of measures concerning them and on the remedies available to them if a judge had not, in their view, taken the appropriate measures?

41. In conclusion, the Committee would be glad to provide the Ukrainian Government with any information that it might need on action to combat discrimination, as it had already done for other Governments.

42. Mr. de GOUTTES thanked the Ukrainian delegation for its interesting report and the frank way in which it had been drafted. He asked how the Ukrainian Government intended to solve the problem of inter-ethnic tensions in Ukraine, particularly in Crimea where, according to paragraph 11 of the report, separatist forces, the Black Sea fleet and the return of the Tatars posed a number of problems.

43. In respect of the situation in Pridnestrovye, where there was still cause for concern, he asked whether the measures provided for in the agreement concluded in April 1992 between the Ministers for Foreign Affairs of the Republic of Moldova, the Russian Federation, Romania and Ukraine had been implemented (last para., p. 12 of the report).

44. What efforts had been made by religious leaders and the Ukrainian authorities to lessen interdenominational conflicts, which were sometimes linked to ethnic conflicts (p. 10 of the report)?

45. How was it possible that, in 1991, no one had been convicted under article 66 of the Criminal Code relating to disregard of the equality of citizens' rights on the grounds of their race, nationality or attitude to

religion (p. 16 of the report)? Had complaints been brought? If they had, why had they not led to prosecution? Was the public sufficiently aware of article 66?

46. Mr. van BOVEN congratulated Ukraine on having submitted its twelfth report so quickly, thus providing information on recent changes in the country. While it gave a good picture of the overall situation, the report did not always specify exactly to what extent the Convention was being implemented.

47. The most important issue dealt with was that of nationalities and the danger of ethnic conflicts. The Committee should be giving thought to what it might do to prevent such conflicts. That was a crucial question, as demonstrated by the events taking place in the former Yugoslavia.

48. He wished to know what steps had been taken by the Ukrainian authorities to draw attention to the Convention and to inform the public and legal specialists that Ukraine had recognized the competence of the Committee to receive individual communications, in accordance with article 14 of the Convention.

49. He would also like to know whether Ukraine planned to conclude agreements with other countries on the rights of minorities such as the one it had signed with Hungary in May 1991 (third para., p. 4 of the report).

50. In his view, the three-year limit for the submission of compensation claims by victims of the previous regime was too short (fourth para., p. 7 of the report).

51. He would appreciate more details on the extreme politicization of the religious world (seventh para., p. 9) and on the tensions between the Orthodox Church and the Autocephalous Orthodox Church. How had the definitive settlement of that latter problem been hampered by the economic crisis (eighth para., p. 9)?

52. With regard to relations with South Africa (pp. 13 and 14 of the report), he emphasized that, despite the undeniable changes going on in that country, some of the sanctions imposed by the United Nations on South Africa, including the embargo on weapons and on oil, would continued to be in effect until they had been officially removed; he wished to know whether Ukraine intended to apply them.

53. Turning to article 66 of the new Ukrainian Criminal Code, reproduced on page 16 of the report, he was surprised, as Mr. de Gouttes had been, that no one had been convicted under that article in 1991. It seemed difficult to imagine that not a single act dealt with in that article had been committed.

54. As to relationships between nationalities, he did not believe that an "authoritarian" solution, as seemed to be implied by the use of the words "State control" in the sixth paragraph on page 21 of the report, was appropriate, even though that wording might simply be a problem of translation. Greater emphasis should be placed on dialogue. The State had to

help solve those problems; the "advisory bodies" referred to in that paragraph also had an important role to play. Could Ukraine provide more information on the matter?

55. The section of the report dealing with the implementation of article 7 of the Convention was disappointing. He would appreciate knowing what measures were being taken in Ukraine in the areas of teaching, education, culture and information to combat prejudice and racial discrimination; he hoped that the next report of Ukraine would contain information in that regard.

56. Mr. GARVALOV joined the previous speakers in thanking the representative of Ukraine. The two reports under consideration gave a clear picture of the difficult situation in Ukraine as it made the transition to democracy and the comments by the representative of Ukraine had been particularly instructive.

57. The two reports and the presentation had given him an opportunity to think again about the more general issue of minorities, as seen from the viewpoint of the Convention. Was there an accepted definition of the term "minority"? Should there be recognition for national minorities, but not other minorities - ethnic, religious or linguistic? Agreement on such questions was far from unanimous. It was not even clear that the world had fully understood the seriousness of the threat that conflicts and confrontations involving minorities represented for regional, national and international security.

58. He came from a subregion of Europe where ethnic conflicts were a reality. Until recently, official doctrine had held that, through the action of Governments and States, all questions relating to minorities had been settled. As States disintegrated, however, it was clear to all that the doctrine had been flawed and that the problems were still there - and in some cases even worse.

59. The two reports submitted by Ukraine, in conjunction with the statement of the representative of the State party, gave a clear view of future legislation on racial discrimination, but not of current legislation. He was confident that the information would be provided in the next report.

60. In respect of the ethnic composition of the population of Ukraine, both reports mentioned Bulgarians. Paragraph 6 of the eleventh report stated that, according to the population census conducted in 1989, there had been 233,000 Bulgarians in Ukraine at that time. However, the breakdown of schools by language of tuition on page 29 of the twelfth report did not mention any Bulgarian schools or students. Perhaps that had been a technical omission, since the following page referred to the fact that 170 Bulgarian teachers had been trained.

61. Did Ukraine authorize the formation of political parties based on ethnic groups? Such parties were authorized in some European countries and prohibited in others, such as Bulgaria. What was the situation in Ukraine?

62. What was Ukraine's approach with regard to the question of minorities? Did Ukraine recognize the existence of "minorities" or did it merely guarantee

the rights of "persons belonging to minorities", as provided for in article 27 of the International Covenant on Civil and Political Rights? Once again, those were highly controversial issues. The Council of Europe was currently considering a draft protocol which defined the meaning of "national minority". Did Ukraine limit itself to recognizing national minorities or did it also recognize the existence of "religious minorities"? In Bulgaria, for example, Catholics represented a religious minority.

63. In his view, in order to apply the principles embodied in the International Convention on the Elimination of All Forms of Racial Discrimination, it was necessary to recognize the existence not only of national minorities, but also of ethnic, religious and linguistic minorities.

64. Mr. SHERIFIS said that he particularly welcomed the willingness shown by Ukraine to engage in a fruitful dialogue with the Committee. Since Ukraine was currently undergoing historic transformations and cataclysmic changes, he wished to know how, in such circumstances, the country was managing to implement the international human rights instruments in general and the Convention in particular. The two reports under consideration (CERD/C/197/Add.5 and CERD/C/226/Add.3) had been drafted on the basis of the guidelines prepared by the Committee and contained a great deal of information; however, some additional clarification was needed. Like other speakers, he found that the twelfth report (CERD/C/226/Add.3) contained more than what was asked of States under the Convention; that was not, however, a reproach.

65. In respect of the composition of the population, he wished to know whether the proportions indicated in paragraph 6 of the eleventh report (CERD/C/197/Add.5), namely, 72.7 per cent Ukrainians and 22 per cent Russians, based on the 1989 census, had remained unchanged. He also wished to know about the rights of individuals belonging to the various ethnic groups; how did those groups take part in the executive and legislative powers; and, if such participation was provided for by law, were there any quotas? The sixth paragraph of page 11 of the twelfth report referred to the "return of Crimean Tatars to their historical homeland"; what was the current situation in that connection?

66. He welcomed the information contained in the last few paragraphs on page 3 of the twelfth report, which related to the strengthening of cooperation between Ukraine and the European countries, Ukraine's acceptance of the principles and its signature of the two documents relating to the Conference on Security and Cooperation in Europe and its plan to become a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter. He particularly welcomed the fact that Ukraine had recognized the competence of the Committee to receive and consider communications, as provided in article 14 of the Convention. Like Mr. van Boven, however, he wondered exactly what steps Ukraine was taking in the areas of teaching, education, culture and information to combat prejudices which gave rise to racial discrimination and, more generally, to give effect to article 7 of the Convention.

The meeting rose at 1.05 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 959th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 2 March 1993, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eleventh and twelfth periodic reports of Ukraine (CERD/C/197/Add.5, CERD/C/226/Add.3) (continued)

1. Ms. SADIQ ALI said that she agreed with Mr. Banton's suggestion that greater awareness of the Convention should be created to enable ordinary people to benefit from it and with his suggestion on the implementation of article 2, paragraph 1 (e). She also endorsed suggestions by other members on the continued implementation of article 3 as far as relations with South Africa were concerned and Mr. van Boven's suggestion on article 7.

2. No reference had been made in the twelfth periodic report (CERD/C/226/Add.3) to any special programmes on ways in which such programmes might affect the goal of achieving racial equality among all sectors of the population, as provided for in article 1, paragraph 4, and article 2, paragraph 2, of the Convention. Protection for non-citizens, such as migrant workers and refugees, was provided for in the Convention and she wondered whether such categories of persons existed in large numbers in Ukraine and whether they were given protection.

3. The report did refer to arrangements for the training of teachers, cultural workers and other officials in regions densely populated by national minorities. She asked what arrangements existed for less densely populated regions.

4. In connection with article 4 of the Convention, the report stated that a new version of article 66 of the Ukrainian Criminal Code had been in force since 12 September 1991 and she noted that it neither prohibited racist organizations nor prevented official bodies from engaging in racial discrimination.

5. With regard to articles 5 and 6 of the Convention, the report indicated that the draft Constitution condemned racial discrimination and guaranteed that all State organs and institutions would act in accordance with the Constitution and international obligations. However, more than mere condemnation was required and she would welcome further details concerning the relevant provisions of the draft Constitution. More information would also be useful on the establishment of effective machinery for the prevention of racial discrimination and on the draft Act on National Minorities in Ukraine.

6. On page 26 of the report, it was stated that, at its first meeting on 21 February 1992, a Round Table had discussed matters relating to the constant attempt by imperial forces to interfere in the internal affairs of the Ukraine. She would like to know what that statement meant. The territorial issue raised by the Russian Parliament had, moreover, jeopardized Ukraine's right to the Crimean peninsula in the Black Sea, despite the fact that the Commonwealth Treaty called on the parties to respect each other's territorial integrity. Furthermore, under the bilateral Ukrainian-Russian

Treaty signed in December 1990, the two countries had recognized the inviolability of the borders they shared. Moscow's departure from that agreement was surprising and could have negative implications. What were the prospects for a peaceful solution to that problem?

7. Mr. SHAHI congratulated the Ukrainian delegation on the quality of its twelfth report and on its candour and sincerity.

8. He welcomed Ukraine's recognition of the Committee's competence under article 14 of the Convention, as mentioned on page 3 of the report. On page 4, the report stated that, by conforming to international standards in the field of human rights and taking into account the experience of other countries in that field, Ukraine had avoided ethnic conflicts, but had no guarantee that the ethnic situation would not deteriorate. It also admitted that there was growing terrorism in Crimea and Pridnestrovye. The Committee was concerned that the human rights of the population of Pridnestrovye had been grossly violated and that the Crimean Tartar problem had not yet been solved. The practice of punishing entire communities by deportation for the crimes of individuals, even though such crimes might be treasonable, was a barbaric practice which could not be justified under any circumstances. It was nevertheless encouraging that the Ukrainian Parliament was giving top priority to questions of human rights, including the rights of national minorities.

9. Although the Convention had been incorporated into Ukraine's domestic law, legislation still had to be enacted to implement the punitive provisions of article 4. He hoped that the necessary legislation would be in place by the time Ukraine submitted its next report, since there was no indication of how those provisions were to be implemented or of how acts covered by article 4 were to be punished.

10. The demographic data supplied was welcome, but, as Mr. Rechetov had suggested, it might be more useful for it to be provided in table form in future.

11. In connection with article 2 of the Convention, the report stressed the importance of the healing of the psychological wounds sustained by society as a result of repression by the former totalitarian regime. The steps taken for that purpose were most welcome, as was the fact that 3,000 persons had already been rehabilitated. It would be most unfortunate if the many thousands of unexamined cases buried in the archives of the Committee on State Security (KGB) and the Ministry of the Interior were not opened up and their victims and their relatives rehabilitated and compensated.

12. Page 8 of the report referred to the radical changes which had taken place in State-Church relations and in the situation of religious organizations, as well as to the Act on Freedom of Conscience and Religious Organizations, including freedom of religious belief and freedom to disseminate religious opinion. Such changes were to be commended and it was high time for religious repression to end.

13. With regard to the problems of national minorities, although Ukrainian nationals were in an overwhelming majority in Ukraine, they constituted a minority in other States of the former Soviet Union, as did national minorities of other countries. Such cross-border interests might help the members of the Commonwealth of Independent States reach agreement on what might be called a charter for the rights of nationals and other minorities, thereby reducing civil conflicts in their States, both between and within ethnic groups.

14. Mr. YUTZIS, referring to the fourth paragraph on page 10 of the report, expressed concern about the problem of religious freedom and religious issues in general and asked for clarification as to whether the "underlying problems" were religious, political or of some other nature. It was also not clear whether those problems were current or whether they had existed much earlier. He also requested further details on the possibility of new flare-ups.

15. The Committee had discussed the question of Jewish emigration at previous sessions and had realized that almost all Jewish emigrants had left their home countries without passports and had not been given passports when they had entered a new country. He therefore wished to know whether Jewish emigration from Ukraine was continuing and, if so, whether the persons concerned emigrated without passports and why?

16. He joined the other members of the Committee in wondering what the international community might do to alleviate conflicts between national minorities and in asking what specific measures the Ukrainian Government was taking to find a peaceful solution to that problem.

17. Mr. BURCHAK (Ukraine) said that the views of the members of the Committee would be an important factor in future efforts by Government institutions in Ukraine to establish conditions for the implementation of the provisions of the Convention. The way in which reports by States parties were considered by the Committee enabled those States to consider their domestic legislation from a more critical standpoint and to remedy any shortcomings.

18. Replying to the questions asked during the discussion of his country's eleventh and twelfth reports, he said that, as a result of Ukraine's ratification of international instruments, those instruments had been incorporated into Ukrainian law and could be invoked in courts of law. The rule was that, in the event of any discrepancy between international and domestic law, the international instrument prevailed, except in respect of criminal legislation and the Constitution. Under the various acts adopted by the Supreme Council, rules of international law which were in accordance with the Constitution were considered to take precedence over those of domestic law. Rules of principle could not be applied automatically or directly unless they were supported by the necessary practical machinery for their implementation and a great deal of domestic legislation still had to be adopted for that purpose.

19. Mr. Shahi's suggestion about the presentation of demographic data was a good one and, in future, such data would be provided in table form.

20. With regard to emigration to Israel and the information that the number of emigrants had dropped, he said that there were several reasons for that decline. In the past few years, Ukraine had been implementing the provisions of international instruments and democratizing political life. It had made efforts to ensure that cultural issues could be settled by the cultural groups concerned and such groups had actively been encouraged to revive their national cultures. Those efforts had been successful and many persons who might have emigrated had not done so. However, economic considerations were important and many persons who had left Ukraine on Israeli visas had, after a stay in Vienna or Rome, gone to the United States, where Government pensions had been made available. Some elderly persons had left for that reason. Following the changes in the former Soviet Union, however, the United States Government had stopped granting refugee status to Jews and that had also cut down on the number of emigrants. Emigration nevertheless continued because life was hard in Ukraine and the prospects of better living conditions always prompted departure.

21. In the past, according to law, individuals leaving the Soviet Union on an Israeli visa would lose their Soviet citizenship as soon as they had crossed the border. Under pressure from international public opinion and before the collapse of the Soviet Union, that legislation had been amended on the grounds that, in denying citizens the freedom to leave and return to their country of origin, the law had been in violation of the provisions of international human rights agreements. Currently, individuals emigrating from Ukraine maintained their right to Ukrainian citizenship and kept their Ukrainian passport.

22. A question had been raised with regard to the influx of German immigrants to Ukraine. In view of Ukraine's current economic situation, which included a budget deficit and a sharp rise in housing prices due to inflation, the Ukrainian Government was not always in a position to provide substantial financial assistance to those immigrants.

23. A number of questions had been asked about the Crimean problem. He was very familiar with the issue, having served as a member of the Human Rights Committee. He had even drafted a report on the Crimean problem in which he had suggested that there should be an organized and gradual return of the Tartars to Crimea. His suggestion had, unfortunately, not found widespread support. The return of the Tartars to their historical homeland was a complex situation. While he was not in a position to provide data on the demographic composition of the Crimean peninsula in the 1920s, data from later periods was available. At the end of the 1930s, there had been approximately 174,000 Tartars living in Crimea, out of a total population of 1.5 million. Approximately 194,000 Tartars had later been expelled from the Crimean peninsula. At the time, they had been forced to leave behind their homes and property, which had subsequently been taken over by other inhabitants of Crimea. It had recently been suggested that all property confiscated since 1918 should be returned to its original owners; however, such a solution could only lead to more conflict. To avoid that, the Ukrainian Government was preparing a programme for the organized return of the Tartars which would

provide them with housing and property. It was the Government's view that some of the costs of such a programme should be borne by the most recent State of residence of the immigrant, who would, in returning to the Crimean peninsula, be leaving property behind.

24. The current situation in the Republic of Moldova involved a great deal of extremism, both on the part of the left and of the right. Until 1939, Moldova had been an autonomous republic established in the territory of Ukraine; it had been inhabited, particularly in the Pridnestrovye region, by a mixed population of Russians and Ukrainians, which had enjoyed freedom of movement. That situation had been altered by subsequent events. At present, there were certain groups in Moldova which wished to see it united with Romania. Such a move would naturally affect the population of Pridnestrovye. In that connection, following a recent meeting between Russia and Ukraine, the Presidents of those States had said that they considered the question of unification with Romania to be an internal affair of the Republic of Moldova. They had also stated that the question of possible self-determination for the people of Pridnestrovye was still open.

25. The problem in Crimea was fundamentally of a political nature. Some lawmakers were insisting that Crimea should be part of both Ukraine and Russia. Certain separatist forces in Crimea were distorting the policies of Ukraine and accusing it of trying to "ukrainize" Crimea. The issue of Crimean autonomy was different from that of the autonomy of other States in the Commonwealth of Independent States (CIS). Crimea was not and had never been a nation state; it had enjoyed territorial autonomy as part of Ukraine. In April 1992, the Ukrainian Supreme Council had passed an act on the status of the Crimean Autonomous Republic guaranteeing that republic a broad range of powers, including economic rights and the right to engage in foreign trade. There were only three main limitations to the powers granted to Crimea: it had not been granted external sovereignty; it had not been vested with the power to grant its own citizenship; and it functioned under the representation of the President of Ukraine. Meanwhile, the wave of declarations of sovereignty in the former Soviet States had affected Crimea, which had proclaimed its autonomy in May 1992.

26. He emphasized that the problem of Crimea was based not on issues of nationality or race, but, rather, on political conflicts. It therefore did not come within the scope of the Convention.

27. With regard to South Africa, he said that, in March 1992, agreement had been reached on the establishment of diplomatic relations between Ukraine and the Republic of South Africa. At the same time, Ukraine was fully committed to implementing the Security Council decisions which had been taken with regard to South Africa.

28. Article 66 of the Ukrainian Criminal Code dealt with disregard for equality of rights on the basis of race, nationality or attitude to religion; it also defined the penalties for such acts. Ukraine was striving to make the provisions of article 66 more humane by replacing the penalty of deprivation of liberty with a fine, where possible. It had also amended article 66 to bring the amount of the imposable fines into line with the increase in the

minimum wage. There had been no convictions under article 66 since 1991. That did not mean, however, that acts described in the article were not being committed. In reality, such acts were less the result of racial hatred than of the political tensions created by the current situation in the former Soviet Union.

29. Article 1 of the Ukrainian law on nationality had maintained the rule set forth in the Constitution of the Soviet Union granting a single nationality to the inhabitants of Ukraine. However, dual citizenship could be granted on the basis of inter-governmental agreements and Russia and Ukraine were currently engaged in negotiations to that end.

30. One member of the Committee had understood that political parties in Ukraine had been violating the laws on non-discrimination. No party, either in its official programme or in its actions, had been guilty of such an infringement. It was true, however, that individual members of those parties often made statements which were incompatible with the provisions of international human rights instruments, including the Convention.

31. He fully agreed that there should be solidarity between the new States emerging from the former Soviet Union so that the various national minorities would be less vulnerable. Solidarity was much preferable to the current state of conflict. States should not limit themselves to acknowledging any failures to conform to human rights standards before the relevant treaty bodies; they should also take note of situations in other States that needed to be rectified. The Act on National Minorities in Ukraine provided such a mechanism. Under that Act, Ukraine had established a special ministry at the national level for dealing with the problems of national groups. In addition, it was also possible in Ukraine to form voluntary advisory bodies made up of representatives of national minorities. The procedures for setting up such advisory bodies were decided by local councils of people's deputies, acting independently.

32. The Procurator's Office would clearly not be able to operate as it had in the past, now that private property and the privatization of State industries had been introduced. One of its main tasks in future would be to guarantee the presumption of innocence in court cases and it would act as a coordinating body for the implementation of the new policies which were being introduced.

33. Mr. Banton had asked about discrimination in the awarding of student grants. All students who were accepted by institutes of higher education received a grant and there was little scope for discrimination. Unfortunately, the proposed Parliamentary Ombudsman for Human Rights had not yet been appointed, but there were many more remedies than there had been in the past, including the new Legal Foundation of Ukraine and a human rights commission under the Supreme Council. Citizens could appeal to their deputy if they felt their rights had been infringed; deputies often raised individual cases, since they were anxious to be seen to defend the rights of their constituents.

34. Mr. de Gouttes had asked about the Black Sea Fleet. Negotiations on the future of the fleet had been going on for some time and progress had been

made. For instance, it had been agreed that, from 1994, Ukraine and Crimea would have joint command of the fleet. He was sure that the process of "civilized divorce" which was taking place would eventually solve the problem satisfactorily.

35. Mr. de Gouttes had also asked about the link between ethnic and religious conflicts. Such a link did exist, but the question was basically one of property rights. In the past, the State had allowed some religious denominations to use church buildings and property confiscated from other denominations. Now that denominations such as the Uniate Church had been legalized once more, disputes over the ownership of the buildings and property had arisen.

36. The State had tried to solve the problem in the Act on Freedom of Conscience and Religious Organizations. Articles 16 and 17 of the Act stated that religious denominations had full rights over buildings and property lent or given to them by the State, public organizations or private citizens. However, so many disputes had arisen that, in April 1992, article 17 had been revoked and property disputes were now to be settled by the courts. Sadly, there were still situations where three different denominations were obliged to use the same church building, so tension was bound to arise.

37. Mr. van Boven had referred to problems of religion and freedom of expression. The problems which had arisen were often due to the dire economic situation and particularly the very high rate of inflation, rather than genuine religious discrimination. Mr. van Boven had also inquired about relations between Ukraine and Hungary. In fact, that very day, the leaders of the two countries had met and had reached an agreement on future friendly relations between the two countries.

38. Mr. Garvalov had asked about educational opportunities for children of Bulgarian mother tongue. As stated on page 30 of the report, 170 teachers had been trained to work in Bulgarian-language schools. Most of those schools were in Transcarpathia and Odessa.

39. Mr. Garvalov had also asked about political parties set up by particular ethnic groups. Cultural organizations specific to a certain ethnic group were permissible, but political parties were not because it would be illegal for them to prevent someone from joining on the grounds of race.

40. Replying to Mr. Garvalov's question about the definition of a national minority, he said that the Act on National Minorities defined a national minority as a group of Ukrainian citizens who were not Ukrainian by nationality and who shared a sense of national self-identification and community. According to that definition, members of a certain religious denomination, such as Catholics, or members of linguistic minorities were not considered national minorities.

41. Mr. Sherifis had asked whether there were quotas for deputies of different nationalities in the Ukrainian Parliament. Such quotas had existed in the past, but deputies were now freely elected and a wide range of nationalities was represented. For instance, one member of the Cabinet of

Ministers, responsible for energy policy, was of Jewish nationality and the Procurator General of the Republic was a Russian who, in fact, spoke no Ukrainian at all.

42. Mr. Sherifis had requested information on the situation of Ukrainian citizens who had left the Ukraine, as many had done, for instance, because of the repression of the Stalin era. The Act on Citizenship of Ukraine laid down a limit of five years for applications for Ukrainian citizenship in most cases, but that rule had been waived for people living abroad who had come back to settle permanently in the Ukraine and could prove that they, a parent or a grandparent had been born in the Ukraine.

43. Mr. Sherifis had also asked about measures to inform the public about the provisions of the Convention. It had been promulgated in the Gazette of the Supreme Council and, along with the other human rights instruments, it had been translated into Ukrainian and lodged in libraries and other places freely accessible to the public.

44. Ms. Sadiq Ali had requested details of programmes to promote equality for national minority groups. The authorities already carried out some activities, but the real basis for such programmes was the Act on National Minorities, which laid down the rights and duties of national minorities and the guarantees afforded them by the State. Among those guarantees were the right to cultural autonomy, freedom of religion, the preservation of cultural traditions and the observance of national symbols and holidays. National minorities were guaranteed education in their national language, either in State schools or through their own organizations. National literature, art and other media were also protected. All those rights were guaranteed in so far as they did not come into conflict with the law of the country.

45. Ms. Sadiq Ali had asked about immigrants in Ukraine. As far as he was aware, there was no immigrant problem: the only immigrants he knew about were Chinese students studying in Ukraine, who had refused to return home after the Cultural Revolution: they had been stateless persons rather than immigrants within the meaning of the Convention, since they had not possessed passports. None of those students had been sent back to China against their will.

46. Ms. Sadiq Ali had also asked about article 66 of the Ukrainian Criminal Code. That article stated that it was a criminal offence to commit deliberate acts aimed at inciting national, racial or religious enmity or hatred and thus applied to racial discrimination as well.

47. Mr. Shahi had referred to the rehabilitation of victims of political repression. The figure of 3,000 persons already rehabilitated given on page 7 of the report referred only to those cases which had been reviewed by the Supreme Court of Ukraine. The total number of persons rehabilitated was approximately 8,000 and the many thousands of persons who had been tried not by the courts, but by extrajudicial tribunals had been automatically rehabilitated by special decree.

48. The CHAIRMAN thanked the representative of Ukraine for his very comprehensive replies to the questions asked by the members of the Committee.

49. Mr. RECHETOV, country rapporteur, congratulated the Ukrainian representative on his excellent statement, which had given proof of a very high level of legal expertise.

50. Mr. van BOVEN joined in commending the high quality of the statement just made. He would welcome further information on the nature of the institutional provisions adopted under article 5 of the Act on National Minorities, as referred to on page 21 of the report. He was not entirely clear as to the implications of the words "State control": possibly a better rendering in English would be State "promotion" or "involvement". Once a policy on minorities had been adopted, it was crucial that some advisory body should be established to monitor its implementation and to act as mediator whenever conflicts arose. Secondly, he would be glad if the Ukrainian representative could give his views on the extent to which international involvement might be desirable to help solve ethnic or national conflicts within Ukraine and, in particular, on what role might be played by the Committee.

51. Mr. SHAHI associated himself with the tributes paid to the Ukrainian representative.

52. He had been pleased to hear that the number of victims of repression now rehabilitated by the courts of Ukraine was in fact 8,000 rather than 3,000. However, he was not sure about the fate of the victims of extrajudicial repression. Some confusion had arisen from the reference on page 7 of the report to hundreds of thousands of unexamined cases still in the archives of the Committee on State Security (KGB) and the Ministry of the Interior. Had those hundreds of thousands of persons also been rehabilitated?

53. Mr. GARVALOV said that, when he had stated earlier that no legal definition of "minority" existed, he had meant that no such definition was so far contained in any international legal instrument. However, the General Assembly, on the recommendation of the Commission on Human Rights, had adopted a Declaration on the Rights of National, Ethnic, Religious or Linguistic Minorities, and a definition did exist in the context of that Declaration.

54. Mr. de GOUTTES said that the Ukrainian representative's statement had provided an enormous amount of information not contained in the report and had helped the Committee to have a better understanding of the events currently taking place in Ukraine.

55. The Ukrainian representative had identified two causes of ethnic tension in Ukraine, both of which were economic in nature. The first was disputes over ownership of property claimed either by returning exiles or by members of religious faiths that had previously been banned. The second was the catastrophic rate of inflation, which had had the greatest impact on the most disadvantaged population groups. That information was of great interest, since ideological or religious factors were normally identified as the main causes of such tensions. The Committee should highlight that point in its concluding observations on the report of Ukraine.

56. He would be interested to learn the views of the representative of Ukraine on how the problem of ethnic tensions might be solved.

57. Mr. RECHETOV, country rapporteur, said the second point raised by Mr. van Boven involved a very delicate issue. It was stated on page 4 of the report that Ukraine had hitherto avoided ethnic conflict: it followed that it would not have appealed to the international community for any help in that regard. The Committee should be very cautious about taking any step which would internationalize any conflict that might exist in Ukraine. In his view, since the Ukrainian Government itself had not raised the question of international involvement, it was not proper for the Committee to do so.

58. Mr. BANTON said that the Ukrainian representative had perhaps not fully understood the question he had raised earlier. He had asked whether the action taken by Crimea in adopting its own Act on the State Independence of the Republic of Crimea would mean that, for example, a Crimean Tartar who considered that his rights had been infringed would not be able to appeal to the Procurator General of Ukraine for redress.

59. Mr. van BOVEN, replying to the point made by Mr. Rechetov, said that he had certainly not been pleading for international intervention in cases of national conflict; he was fully aware of the risks involved in such intervention. He had, rather, been advocating the type of preventive diplomacy proposed in the Secretary-General's report "An Agenda for Peace" (A/47/277), which could be of great assistance in preventing conflicts from deteriorating by helping to promote dialogue and to identify problems; the Committee or another United Nations body might have a useful role to play in that regard. The point was an important one, since, in the past, the Committee had not been very effective on that score.

60. He realized that the question was a delicate one and he did not expect the Ukrainian representative to be in a position to give an immediate reply: perhaps, however, he might wish to discuss it with his authorities.

61. Mr. BURCHAK (Ukraine) said he believed he had already replied to Mr. van Boven's first question by stating that his Government had set up a Ministry on Questions of Minorities, which would have the assistance of an advisory body consisting of representatives of minority organizations. Article 5 of the Act on National Minorities empowered local authorities to set up appropriate mechanisms for dealing with problems involving minorities. Of course, the difficulty was how to ensure that the provisions and standards contained in the Act were actually implemented and did not remain a dead letter.

62. On the second question, he pointed out that, apart from its economic difficulties, Ukraine had suffered from confrontations between the executive and the legislature which had led to the dissolution of Parliament. In his view, it was not mediation, but, rather, economic and political stability that his country needed if a solution to its problems was to be found. However, he would inform his Government of the Committee's suggestion that its intervention might prove helpful.

63. In reply to the question asked by Mr. Shahi, he said that the report was not entirely accurate on the matter of rehabilitation. The rehabilitation process had been begun in the former Soviet Union following the twentieth Party Congress, when a number of victims of repression, including the author Solzhenitsin, had been rehabilitated by a judicial decision of the Supreme Court and allowed to return home. However, such judicial decisions by necessity covered only a limited number of cases and many thousands had been released or allowed to return without formal rehabilitation. In addition, rehabilitation had automatically been granted to all those who had suffered from extrajudicial repression without having been convicted by a court: such persons did in fact number in the hundreds of thousands. Wherever possible, relatives of those whose names remained in the archives had been notified, but often no relatives survived. He pointed out that anyone was now entitled to apply for access to the archives if they wished to obtain information.

64. On a point raised by Mr. Garvalov, he said that, where linguistic minorities were concerned, Ukrainian law already provided that interpretation should be provided where necessary for persons appearing before the courts.

65. In reply to Mr. Banton, he said that, since the Republic of Crimea was an integral part of Ukraine, any appeals by its citizens on decisions affecting them, including appeals to the Procurator General of Ukraine, were admissible in court. The interests of Crimean citizens living in Ukraine were thus already protected under the law.

66. In conclusion, he thanked the Committee for the cooperation and understanding it had shown and assured it that his country's next report would take account of all the comments made.

67. Mr. Burchak (Ukraine) withdrew.

68. The CHAIRMAN drew the Committee's attention to a communication from the Government of the Sudan replying to his request for information, which was contained in document CERD/C/222/Add.1. He suggested that that communication should be considered on Tuesday, 9 March 1993.

The meeting rose at 5.50 p.m.

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13 April 1993

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 960th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 3 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.25 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3)

1. The CHAIRMAN informed the members of the Committee that the Government of Trinidad and Tobago had given official notice that it was updating its report; it was therefore requesting that the report should be considered at the Committee's next session.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SEVENTH SESSION (agenda item 2)

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (GENERAL ASSEMBLY RESOLUTION 47/79);

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION 47/111)

2. The CHAIRMAN, introducing the report of the fourth meeting of persons chairing the human rights treaty bodies (A/47/628), said that the meeting had been held in Geneva from 12 to 16 October 1992 and that the chairpersons of the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee on the Rights of the Child and a member of the Group of Three established under the International Convention on the Suppression and Punishment of the Crime of Apartheid had taken part. The report was divided into four parts: an introduction, a chapter on the organization of the meeting and its agenda, a chapter on the substantive questions that had been considered and a chapter on the conclusions and recommendations of the participants.

3. The chairpersons of the human rights treaty bodies had first of all stressed how important it was for States to submit their reports on time, as any delay in the submission of those reports constituted a serious interruption in the process of implementing the treaties. They had also noted that the amount of time between the submission of a report and its consideration by the committee concerned discouraged States from submitting their reports on time. They had proposed that each treaty body should draw up a list of States whose reports were overdue or which had never submitted an initial report, ordered according to the amount of time the report was overdue, and had said that they were considering the adoption of a specific decision referring to those States parties whose reporting record was especially unsatisfactory. They had stressed, however, that, even without a report, enough information could be obtained from other sources to carry out a review of the situation in the country concerned, which, whenever possible, should take the form of a dialogue.

4. With regard to the universalization of the human rights instruments, the chairpersons had welcomed the increase in the number of States parties to the various treaties that had taken place since their last meeting, noting that the vast majority of Member States of the United Nations were participating in the treaty system. They had nevertheless expressed concern that a number of States had adhered to only one of the two Covenants, contrary to the principle that the two sets of rights covered in the Covenants were complementary and indivisible; they had concluded that it was necessary to urge State parties which had ratified only one of the two Covenants to consider carefully the possibility of ratifying the other as soon as possible.

5. In respect of the financial situation of the treaty bodies, the participants had welcomed the amendments to the funding provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but had noted with concern that at least two years would be required to obtain the accord of the necessary two thirds of States parties to those two Conventions. They had recommended that, in the meantime, adequate funding should be assured for the Committee on the Elimination of Racial Discrimination and the Committee against Torture to enable them to fulfil adequately their supervisory functions.

6. Emphasizing that adequate secretariat resources were vital to the effective functioning of the treaty body system, the participants had noted that the resources available to the Centre for Human Rights were grossly inadequate and that the working conditions of the secretariat, especially the facilities and information technology available in Geneva, were primitive. They had indicated that many of the urgent needs of the treaty bodies could not be satisfactorily met without more far-reaching financial, personnel and administrative reforms. They had therefore recommended that a thorough study should be undertaken, by an independent expert, of the full range of measures that would be required at the secretariat level to ensure adequate servicing. The participants had also recalled that a recommendation had been made to establish a committee resource room within the Centre for Human Rights and that the Commission on Human Rights had requested the Secretariat to give consideration to that proposal for the purpose of facilitating access to the various sources of information that were essential for the effective functioning of the treaty bodies.

7. With regard to the computerization of the work of the treaty bodies, the chairpersons had noted with regret that only three Member States had responded to the request of the Secretary-General to contribute to the one-time start-up costs of a computerized information system and they had thus urged Member States, as well as the private sector, foundations and other interested organizations, to contribute.

8. In respect of improving the effectiveness of the reporting process with special reference to adequate information, the participants had recommended that each committee should be provided, when it considered the report of a State party at a particular session, with a comprehensive country file on the

State party concerned, which should include past reports of that State under the instrument concerned and pertinent information contained in the reports submitted by that State to other bodies.

9. Referring to the promotion of interaction among the treaty bodies, the participants had noted that the system of designating certain members of each committee to follow developments in other committees and human rights bodies had been unsatisfactory in practice and had recommended that the chairperson of each committee should, immediately after each session and with the assistance of the secretariat, prepare a brief account of the significant developments that had taken place at that session and circulate it to the other chairpersons and, if possible, to the members of the other committees.

10. With regard to information and publications on the work of the treaty bodies the chairpersons had stressed that it was important to strengthen the human rights information programme to make it more coherent and effective and that a higher priority should be given to the production, translation and distribution of human rights publications and documentation.

11. In respect of the World Conference on Human Rights, the participants had considered that representatives of the treaty bodies had not so far been afforded an appropriate opportunity to contribute to, and participate in, the preparatory process and had therefore recommended that provisions should be made to ensure their full participation at all future meetings of the Preparatory Committee, as well as at the Conference itself. The participants had also been concerned that discussions concerning the agenda for the Conference had so inadequately reflected the priority accorded by the General Assembly to issues relating to the treaty bodies. They had thus recommended that consideration should be given to the holding of a meeting, within the framework of the Conference, of the persons chairing the human rights treaty bodies and those chairing each of the principal regional and other human rights organizations.

12. With regard to advisory services and technical assistance, the participants had recommended that a greater effort should be made to integrate and harmonize activities in the fields of public information and advisory services aimed at national institutions.

13. In connection with the very significant issue of reservations to human rights treaties, the participants had been very concerned about the reservations made to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, since a number of reservations had been thought to be incompatible with the object and purpose of those two Conventions. It had been agreed that the States parties concerned should be urged to withdraw the reservations and that other States parties should not hesitate to object to such reservations as appropriate. If, in the view of the relevant treaty body, the reservations gave rise to significant questions in terms of their apparent incompatibility with the object and the purpose of the international treaty, that treaty body should consider requesting the Economic and Social Council or the General Assembly to request an advisory opinion from the International Court of Justice. Furthermore, the General Assembly should consider requesting the

Commission on Human Rights to authorize the preparation of an analytical study of issues of incompatibility arising out of the reservations that had been made to the principal treaties, to be undertaken by the Subcommission on Prevention of Discrimination and Protection of Minorities.

14. Lastly, with regard to massive violations of human rights, the participants had endorsed the proposal made by the Secretary-General that ways should be explored of empowering the Secretary-General and expert human rights bodies to bring massive violations of human rights to the attention of the Security Council, together with recommendations for action, and had recommended that the Security Council should be encouraged to take full account, in its deliberations and in its decisions and resolutions, of the obligations of States pursuant to the human rights treaties. They had also recommended that each treaty body should undertake an examination of all possible measures it might take to prevent human rights violations from occurring and to monitor more closely emergency situations of all kinds in States parties.

15. Mr. SHAHI proposed that the members of the Committee should begin with the consideration of the conclusions and recommendations contained in document A/47/628 that related to the mandate of the human rights treaty bodies in general and of the Committee on the Elimination of Racial Discrimination in particular. They might, for example, consider the critical issue of reservations to human rights treaties and decide what action the Committee might take in that area.

16. Mr. YUTZIS proposed that the Committee should first determine which questions deserved the highest priority and then set up small working groups to draft proposals and submit them in plenary. In his view, there were eight major points on which the Committee should take a position, including the question of funding, which had come up several times in the report (A/47/628). That question was of particular concern since, in the view of the participants in the fourth meeting of persons chairing the human rights treaty bodies, if additional funding was not found, the credibility of the entire United Nations human rights programme would be in jeopardy. He therefore wished to know why the chairpersons of the human rights treaty bodies considered that it would take at least two years for the amendments to the funding provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to be ratified by two thirds of the States parties and thus to take effect, when everything depended on the good will of those States. They were the source of any amendment to the system of funding the Committee on the Elimination of Racial Discrimination. If they believed that the Committee's financial situation was not particularly bad and did not help finance its activities while waiting for the entry into force of the amendments and did nothing to speed up that process, the Committee would not be able to continue to function. The Committee therefore had to find an effective strategy to encourage States parties to comply with their obligations under the Convention.

17. With regard to promoting interaction among the treaty bodies, he doubted that the system of designating certain members of each committee to follow developments in other committees and human rights bodies had failed because of a lack of secretariat resources (A/47/628, para. 26). In fact, the infrastructure needed for the proper functioning of the system had not been set up. Recalling that the members of a working group set up by the Commission on Human Rights to consider a draft resolution on racism and xenophobia had welcomed the contribution to their work made by a member of the Committee on the Elimination of Racial Discrimination, he said that it was not enough to submit reports on the status of the implementation of the various human rights instruments because that would just compartmentalize the activities of the various committees, the Subcommission and the Commission on Human Rights. He also deplored the fact that the Committee's decision to hold joint meetings with the Subcommission had not been implemented.

18. He proposed that a working group should be set up to decide exactly how the Committee would contribute to the World Conference on Human Rights.

19. In his view, reservations to human rights treaties (A/47/628, para. 36) diluted the very substance of the conventions or treaties.

20. Special attention should be given to the issue of prevention of human rights violations and urgent action (A/47/628, para. 38). That approach could not be said to contravene a single article of the Convention, particularly in view of the recent surge of violence against and even within minority groups. The Committee would therefore do well to take the initiative, without any implication of interference in the affairs of States.

21. It was vital for the Committee to consider the question of which information sources should be regarded as valuable and reliable.

22. Mr. GARVALOV said that the Committee's financial situation was out of its hands and all it could do was to refer the matter to the competent authorities.

23. With regard to its competence, the Committee was, of course, limited by its mandate under the Convention. At the same time, the chairpersons of the human rights treaty bodies had stated that "recent developments had demonstrated the close connection between human rights and national stability and development as well as international peace and security" (A/47/628, para. 14). That statement called for a new reading of the Committee's mandate, as set forth in article 9 of the Convention. It was hardly gratifying to realize that the Committee on the Elimination of Racial Discrimination played a secondary role by comparison with the other treaty bodies; the Committee clearly needed to improve its image. Last August, the Committee could have been more incisive when it adopted its resolution on the events in the former Yugoslavia, for the situation had already assumed the proportions of an international problem.

24. As to the universalization of human rights instruments, particularly the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee should not confine itself to blaming States

whose reports were overdue because that implicated only the States parties to the Convention. If the question of racial discrimination was to be dealt with comprehensively, the Committee had to acknowledge that many States had still not acceded to the Convention.

25. Mr. BANTON proposed that the Committee should simply adopt the report under consideration, which was an excellent and important document, unless some members had objections to its content. He agreed that the Committee should review its working methods, but suggested that it first become better acquainted with the working methods of certain other treaty bodies. He also agreed with Mr. Yutzis and Mr. Garvalov that the Committee should take certain initiatives, but he did not think that the question came within the framework of consideration of the report of the fourth meeting of persons chairing the human rights treaty bodies (A/47/628).

26. Mr. SHERIFIS said that he shared Mr. Banton's view with regard to the quality of the report under consideration, but was not convinced that the Committee should simply go ahead and adopt it because it contained some ideas which should be discussed by the Committee. It also raised issues on which it would be appropriate to take action.

27. Like Mr. Banton, Mr. Garvalov and Mr. Yutzis, he considered that the Committee should be prepared to take the initiative on questions within its competence. In his opinion, the Committee should not restrict itself to obeying the letter of its mandate, as it was defined in the Convention. While bearing in mind the purposes for which the Convention had been drafted, he thought that it contained some limitations that could be overcome by means of a new interpretation.

28. He agreed with Mr. Garvalov's view that, if the Convention's objective was to eliminate all forms of racial discrimination, then States that had not acceded to it deserved criticism just as much as States which were late in submitting their reports. The Convention would have to be interpreted in a new light to find support for that view as well.

29. He recalled that, in the report which he had submitted to the forty-seventh session of the General Assembly on the work of the Organization, the Secretary-General, Mr. Boutros Boutros-Ghali, had proposed that ways should be explored of empowering the Secretary-General and expert human rights bodies to bring massive violations of human rights to the attention of the Security Council, together with recommendations for action (A/47/1, para. 101). That point was of particular importance in view of recent events, which had demonstrated that there was a close relationship between human rights, national stability and development and international peace and security. The chairpersons of the treaty bodies had fully endorsed the proposal; in their view, each organ could decide which situation required forwarding to the Security Council (A/47/628, para. 37). That major issue deserved particular attention by the Committee, which should set itself the task of defining the idea of "massive violations". A working group could be set up to discuss that issue; it could report to the Committee at its current session so that members might take a decision before the end of the session.

30. Mr. de GOUTTES said he too believed that the report of the fourth meeting of persons chairing the human rights treaty bodies (A/47/628) contained some very important proposals. The members of the Committee who had spoken earlier had already identified the problems for the Committee raised by the implementation of the proposals relating to it. Mr. Yutzis had referred to the issue of funding, interaction with other treaty bodies and the basic question of the prevention of racial and ethnic discrimination. A meaningful debate on those issues had therefore already begun. He hoped that, during that debate, the Committee would give some thought to what possibilities were actually available to it. In view of massive violations and even deliberate policies of discrimination, the Committee could not remain inactive. Moreover, it should be encouraged by the positive evaluations it had received from the General Assembly and from the most recent meeting of chairpersons of the human rights treaty bodies, which had welcomed the procedures adopted to deal with States whose reports were overdue. In its resolution 47/79, which related to the Committee and had been adopted at its last session, the General Assembly had referred to "innovative procedures".

31. Document A/47/628 contained at least two proposals that should be discussed immediately by the Committee and that could be followed up. First, in paragraph 44, each treaty body was called upon to "undertake an urgent examination of all possible measures it might take, within its competence, both to prevent human rights violations from occurring and to monitor more closely emergency situations of all kinds arising within the jurisdiction of States parties". The Committee must think about the measures it could take for that purpose. He suggested, for example, that, under article 9 (1) of the Convention, the Committee might request reports on ethnic discrimination from the States parties to the Convention involved in the conflict in the former Yugoslavia, such as Croatia and Slovenia. Those reports might be requested for the Committee's next session or even before.

32. Secondly, the chairpersons recommended, in paragraph 45 of the report, that members of the human rights treaty bodies should participate in the work of ad hoc expert groups dealing with human rights issues. In that connection, a member of the Committee might be included in the commission of experts appointed pursuant to Security Council resolution 780 (1992). Another type of participation, which had already been suggested by Mr. Yutzis, might relate to the follow-up to resolution 1993/20 on measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance, adopted by the Commission on Human Rights on 2 March 1993. Other ways of participating might also be envisaged.

33. Mr. van BOVEN said that the questions raised in the report (A/47/628), which had been clearly elucidated in the Chairman's introduction, should inspire the Committee to examine its conscience. The Committee, which had been established in the late 1960s, had been the first treaty body and had thus played a pioneering role. Even today, the Committee was responsible for monitoring the implementation of the convention which had the greatest number of ratifications. It was true that the States which played an important role on the international scene still had not ratified it, including the United States, Japan, Turkey, which was none the less a sponsor of Commission on Human Rights resolution 1993/20, and South Africa, which might become a

party in the near future. Then, too, the Committee had the largest number of overdue reports: for 132 States parties to the Convention, 336 reports were overdue. Like Mr. de Gouttes, he had noted that the General Assembly had welcomed the procedures adopted by the Committee to deal with States whose reports were overdue, but he had to point out that such delays made it seem doubtful that many States parties took the Committee seriously enough.

34. At a time when racism and xenophobia were on the rise, the Committee naturally still had a role to play. But was that role clearly understood? At the preceding session, Mr. de Gouttes had emphasized the need to establish closer contacts with the other treaty bodies. The absence of ties between those bodies did in fact give rise to disappointing situations. For example, the Subcommission had adopted a major resolution on contemporary forms of racism and racial discrimination which had led to the adoption on 2 March of Commission on Human Rights resolution 1993/20, in which the Commission had, inter alia, decided to appoint a special rapporteur on those matters. The Committee would certainly have relevant information to make available to the special rapporteur. At the same time, it was not clear whether the Committee would have been in a position to play an effective role with regard to ethnic discrimination in Yugoslavia. It could, of course, have invoked articles 11 to 13 of the Convention, but those articles provided for a complicated mechanism which had never actually been used and which it might not be possible to revive.

35. As the report (A/47/628) had already been endorsed by the General Assembly in its resolution 47/111, the Committee could be all the more energetic in implementing the proposals it contained. Mr. Shahi had already suggested that the Committee should discuss the proposals of relevance to it under the agenda item relating to the World Conference on Human Rights. That was one possibility, but some aspects of the proposals were not necessarily related to the Conference and still warranted attention, such as the issue of identifying emergency situations of concern to the Committee, which had already been mentioned by some members of the Committee. Another question of direct interest to the Committee was that of information sources, especially in the case of countries which had not submitted a report. In order to examine the situation in such countries, the Committee had to look to other sources, if only to avoid giving States the impression that they could evade their responsibilities by not submitting a report. Another issue was that of reservations to the Convention, as referred to by the Secretary-General in document CERD/C/60/Rev.1. The Committee ought to be looking systematically at that issue each time it considered the report of a State party; it should have done so the previous day when it had considered the twelfth report of Ukraine. States were obviously free to make reservations, as long as they were not incompatible with the purposes of the Convention, but the Committee should on occasion, be asking States parties whether they might consider withdrawing their reservations.

36. With regard to financing, after the adoption by the General Assembly of the amendment under which the Committee's funding would come from the United Nations regular budget, it was to be hoped that the amendment would be ratified quickly by two thirds of the States parties to the Convention. The Committee could play a role in that regard by encouraging States parties to ratify the amendment as rapidly as possible.

37. Document A/47/628 also mentioned the question of relations with non-governmental organizations. In that connection, he drew attention to the contrast between the current session of the Commission on Human Rights, in which about 100 NGOs were taking part and that of the Committee, which counted itself lucky if 2 or 3 representatives of those organizations were present at its meetings. It had to be admitted that the Committee generally operated in isolation and that its work aroused limited interest. Although the Convention did not explicitly mention NGOs, it was clear that the Committee had to cooperate with such organizations. The Committee should also promote the work of national institutions involved in action to combat racism. There again, a gap existed: the Committee was isolated not only in relation to other United Nations bodies, but also at the national level, where its existence was barely known. The statements made on behalf of Governments at the time of the submission of reports had little impact at the national level. With regard to cooperation with NGOs, the Committee could be guided by the models provided by the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child. The latter committee had been set up very recently and the role of NGOs was referred to in the Convention on the Rights of the Child.

38. In conclusion, he welcomed the fact that the report of the fourth meeting of persons chairing the human rights treaty bodies was giving the Committee an opportunity to review its working methods and take new initiatives.

39. Mr. LECHUGA HEVIA said that the Committee first had to solve the main problems that were hampering its work and making it less credible, namely, the fact that many countries were overdue in submitting their reports and the fact that the Committee was not sure that it would have the funds it needed for its effective functioning. The Committee might request the Secretary-General to encourage States parties to ratify as rapidly as possible the amendments to the funding provisions of the Convention adopted by the General Assembly. The secretariat would also need more resources in order to give the Committee greater assistance. The Committee should request the Information Service to play a more active role in the dissemination of information on the Convention and the Committee's work, for example, by producing a television programme.

40. Mr. YUTZIS proposed that the Committee should establish five working groups. The first would deal with the problem of the non-submission of reports by States parties. It would consider whether the Committee should continue to review the situation in countries which did not submit their reports on time. It would also discuss ways of speeding up the ratification by States parties of the amendments to the Convention relating to the Committee's funding.

41. The second working group would consider the relationship between the Committee and the other United Nations human rights bodies. In that connection, he was surprised that, on the previous day, the Commission on Human Rights had adopted resolution 1993/20 on "Measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance" without even consulting the Committee.

42. The third working group would consider ways of encouraging countries which had not yet done so to ratify the Convention. One of the sponsors of the resolution to which he had just referred was not even a party to the Convention.

43. The fourth group would identify what the Committee could do to prevent human rights violations, especially the practice of ethnic cleansing, which might have been thought to be a thing of the past. The Committee could not simply react "after the event".

44. The fifth group would make a critical analysis of the above-mentioned resolution.

45. Mr. SHERIFIS said that he supported the proposal by Mr. Yutzis, especially with regard to the establishment of a working group on the prevention of massive human rights violations. Like Mr. Lechuga Hevia and Mr. van Boven, he considered that the Information Service should play a more active role in making information available on the Convention and the Committee's work. He had made a proposal along those lines at an earlier session.

46. Times had changed since the adoption of the Convention and the Committee's methods also had to change. The members of the Committee should therefore not refuse, for fear of being influenced, to hear the arguments of the representative of a State party which was contesting a decision by the Committee. As Mr. van Boven had said, the Committee should determine whether its work was of interest to the other United Nations bodies and to public opinion and, if necessary, recognize its errors. It could discuss that question in greater depth informally in a closed meeting.

47. Mr. de Gouttes had rightly drawn the Committee's attention to paragraphs 44 and 55 of the report of the fourth meeting of persons chairing the human rights treaty bodies (A/47/628). Paragraph 45 stated that it might be appropriate for a member of one of those bodies to be included as part of the commission of experts appointed pursuant to Security Council resolution 780 (1992) to consider evidence of grave breaches of international humanitarian law in the territory of the former Yugoslavia. The Committee might propose that one of its members should be included in that Commission.

48. In its resolution 1993/20, the Commission on Human Rights proposed that a special rapporteur should be appointed on contemporary forms of racism, racial discrimination and xenophobia. The Committee might request one of its members to be a candidate for that post.

49. It was entirely unacceptable that the Commission on Human Rights should have adopted that resolution without notifying the Committee, which should hold a closed meeting to discuss that lack of communication and other matters.

50. Mr. SHAHI said he agreed with the proposal by Mr. Yutzis that five working groups should be established. In his view, the most important group would be the one which would consider ways of preventing massive human rights violations. In his capacity as Chairman of the Committee, he had written to Mr. Martensen on 12 September 1992 asking him whether it would be possible for the Secretariat to prepare a study on the role which the human rights bodies might play in the prevention of massive violations of those rights. He hoped that that study would be carried out.

51. At the first and second preparatory meetings for the World Conference on Human Rights, he had also insisted quite strongly that a study should be carried out on the role the Security Council might play in that regard. He welcomed the fact that the chairpersons of the human rights treaty bodies had endorsed those two suggestions.

52. Since the Committee had already taken measures which were not provided for in the Convention, it might also adopt some relating to prevention, provided that they were in keeping with the spirit of the Convention.

53. The proposal by Mr. Sherifis on the role of the Secretary-General and the Security Council was no longer so relevant because of the unwillingness of the members of the Security Council to intervene in Bosnia. The Committee might nevertheless consider that matter when all its members were present.

54. He also deplored the fact that the Commission on Human Rights had not considered it necessary to inform the Committee that it was going to adopt a resolution on xenophobia.

55. One of the Committee's limitations was that it considered reports on events dating from two or more years previously. The Committee should hold a closed meeting to discuss that problem. The only time it had dealt with a problem of current relevance had been when it had discussed the situation in the former Yugoslavia at its preceding session.

56. He welcomed the Secretary-General's proposal that ways should be explored of empowering expert human rights bodies to bring massive violations of human rights to the attention of the Security Council, together with recommendations for action (see A/47/628, para. 43).

The meeting rose at 1.05 p.m.

CERD/C/SR.961
9 March 1993

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 961st MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 3 March 1993, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.961/Add.1.

The meeting was called to order at 3.20 p.m.

ORGANIZATION OF WORK (continued)*

1. The CHAIRMAN said that the Committee was continuing its consideration of the report of the fourth meeting of persons chairing the human rights treaty bodies (A/47/628). Mr. Yutzis had suggested earlier that the Committee should establish five working groups to deal with the following matters:
(a) submission of reports; (b) liaison with other human rights bodies;
(c) ratification by States of the Convention on the Elimination of all Forms of Racial Discrimination; (d) the resolution adopted by the Commission on Human Rights on measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/1993/L.20/Rev.1); and (e) the role of the Security Council in preventing massive violations of human rights.

2. Mr. BANTON (Rapporteur) suggested that the Committee should postpone action on establishing certain working groups as he would be making a number of proposals in connection with that matter. With regard to the proposed working group on States which had not yet ratified the Convention, he would make a proposal which was in line with Mr. Yutzis's intentions, but which might avoid legal difficulties. The methods used by other treaty bodies might serve as useful models in that regard.

3. He would also be proposing that the Committee should address communications to successor States. Legal advice would be needed in drafting such communications, in particular those addressed to the successor States to the former Yugoslavia and the former Czech and Slovak Republic. Communications should encourage current States to conform to the reporting schedule of the States which they had succeeded. That was particularly relevant in the case of one of the successor States to the former Czech and Slovak Republic, where one particular ethnic minority was currently under a great deal of pressure. An expression of concern from the Committee might have preventive value in such circumstances.

4. The issues facing the Committee in the 1990s were substantially different from those of 20 or 30 years previously. Resolutions from the 1960s had naturally been drafted with the problems of that era in mind. Subsequent resolutions had tended to recapitulate parts of earlier ones without altering them in the light of changed circumstances. Mr. Shahi had suggested that the Committee's letter of transmittal might include an introductory statement to that effect.

5. He wished to transmit a message to the Committee from a former member, Mr. Vidas. Mr. Vidas was complaining that the Yugoslav Government had violated his rights in response to his statement that, on retirement from the Yugoslav diplomatic service, he wished to reside in Croatia. Mr. Vidas said that, in March 1992, during his absence from Belgrade, the local police had organized a group of so-called Serbian refugees from Croatia who, with arms,

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* Resumed from the 957th meeting.

had forced their way into his apartment and had taken charge of all his possessions; contrary to law, the Belgrade courts had not evicted the occupiers within 24 hours, but had waited for three weeks, had retained his possessions and were refusing to return them and were refusing to institute criminal proceedings against the occupiers. Instead, they had organized a menacing campaign in the local press against him. Mr. Vidas also said that it was obvious that the withdrawal by the Yugoslav authorities of his candidacy for re-election to the Committee in 1992 had been an act of racial discrimination based on his Croatian nationality.

6. What had happened to Mr. Vidas clearly illustrated the nature of the new problems facing the Committee. Mr. Sherifis, too, had been the victim of ethnic cleansing. Such abuses had taken place not because members of one ethnic group regarded themselves as superior to members of another ethnic group, but because they regarded themselves as different. Personal security was emerging as a new concern: members of certain ethnic groups wishing to be internationalists were forced to identify with their own group for purposes of security. It was important to draw those changes to the attention of other United Nations bodies.

7. The CHAIRMAN said that, as Mr. Vidas's case was clearly one of racial discrimination, the Committee should certainly demonstrate its concern in some manner.

8. Mr. van BOVEN said that Mr. Vidas's case was a matter of serious concern and would be best discussed outside of plenary. The Committee must demonstrate its solidarity with its former member and take concrete action.

9. In his view, it was not necessary to have five working groups. It was not efficient to set up a working group for every topic with which the Committee was dealing, as the list was very long. Furthermore, the Committee might in plenary debate settle some of the issues which had been proposed for the working groups.

10. He suggested that a single working group should be established to study the question of preventing human rights violations and monitoring emergency situations.

11. In considering the various country reports, the Committee sometimes lacked certain information which might facilitate its task. He wondered whether the Secretariat might make available to the Committee information from other treaty monitoring bodies, particularly their concluding observations.

12. The CHAIRMAN pointed out that a major role had been assigned to the treaty bodies in paragraphs 43 to 45 of the report of the fourth meeting of persons chairing the human rights treaty bodies. It was therefore all the more important for the Committee to improve its working methods and, to that end, it might benefit from knowing more about the methods used by other treaty bodies.

13. Mr. SHAHI said that he fully endorsed Mr. Banton's views. In particular, it was important to draw attention to the kinds of ethnic conflicts that were arising from causes other than those envisaged in the Convention. It was essential for participants at the World Conference on Human Rights to be fully aware of such changing circumstances.

14. He also agreed with the views expressed by Mr. van Boven.

15. The case of Mr. Vidas clearly deserved the Committee's attention. It should be discussed in private before any decision was taken in plenary.

16. While the Committee would benefit from an examination of the working methods of other treaty bodies, it should not delay in setting up a working group to consider the proposals in articles 44 and 45 of the report of the fourth meeting of persons chairing the human rights treaty bodies. The Committee could then postpone until the following week its consideration of the role of the Security Council and the empowerment of the Secretary-General with regard to human rights issues.

17. Mr. YUTZIS said that, while appreciating the comments of Mr. van Boven, he continued to believe that certain matters required separate treatment, in particular those which did not receive full attention in plenary. A working group was clearly indicated with regard to the resolution adopted on 2 March 1993 by the Commission on Human Rights on measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance, as the text had many implications for the Committee. That same working group might also deal with the prevention of human rights violations.

18. He agreed with Mr. Banton that attention should be drawn to the changing circumstances confronting the treaty bodies.

19. In respect of the Vidas case, the Committee should certainly not remain deaf to a colleague's appeal. Moreover, that was not an isolated case and the Committee might consider highlighting a number of such cases, rather than a single one.

20. Mr. SHERIFIS said that he fully endorsed Mr. Banton's views. He himself had recently expressed a similar idea, namely, that the Committee should be bearing in mind the spirit of the Convention rather than interpreting it *stricto sensu*. He would be glad to help draft the letter of transmittal mentioned by Mr. Banton.

21. Certain working groups were clearly necessary; however, it would not be useful to have too many. The Committee should certainly establish a working group to consider ways of empowering the Secretary-General and human rights bodies to bring massive violations of human rights to the attention of the Security Council, as provided in paragraph 37 of document A/47/628, and to agree on a precise definition of what constituted "massive violations of human rights".

22. Turning to the case of Mr. Vidas, he pointed out that it was the sovereign right of any Government to propose the candidate of its choice for any particular post and that, consequently, the Committee could not consider that aspect of the complaint. However, the seizing of property on the basis of ethnic origin clearly fell within the purview of the Committee, which should take a position on the issue.

23. Mr. de GOUTTES said that he fully agreed with the previous speaker. Mr. Vidas had been a victim of discrimination and the Committee should consider the matter in a closed meeting to see what action might be taken.

24. He too felt that the Committee should avoid setting up too many working groups. Perhaps two would be enough: one to consider ways of improving the Committee's functioning with regard to all its traditional tasks and a second to study the priority issues raised in the report of the fourth meeting of persons chairing the human rights treaty bodies.

25. Mr. YUTZIS said that he agreed by and large with the proposal by Mr. de Gouttes. However, he believed that one additional working group was needed to consider the resolution adopted by the Commission on Human Rights on measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Alternatively, the first working group proposed might be able to discuss that matter along with its other items.

26. There was a clear need for the second working group proposed by Mr. de Gouttes. That group should be mandated to study several related issues: the role of the Security Council in responding to massive violations of human rights; responses to emergency situations; prevention of human rights violations; and urgent action by treaty bodies in emergency situations, all of which were referred to in paragraphs 38 and 39 and 43 to 45 of document A/47/628.

27. Mr. GARVALOV said that the Committee could discuss Mr. Vidas' case in either a public or a closed meeting, but it was essential to show solidarity with him in some way. The Committee should begin to discuss its future methods of work as soon as possible. Even if working groups were not set up straight away, members should put forward informal suggestions to open up the discussion. One of the most pressing issues was the resolution adopted by the Commission on Human Rights (E/CN.4/1993/L.20/Rev.1) on 3 March 1993, which, incidentally, called upon Member States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, but not the International Convention on the Elimination of All Forms of Racial Discrimination.

28. Mr. LECHUGA HEVIA said that Mr. Vidas' case was an urgent one. A small working group, consisting perhaps of the Chairman, Mr. Banton and Mr. Sherifis, could meet that evening and submit its conclusions to the Committee the next day.

29. The CHAIRMAN said that he personally would prefer to discuss all cases of discrimination against members or former members of the Committee together. However, if the Committee wished, a small working group could draw up a draft recommendation or resolution for consideration by the Committee the next day.

30. The Committee seemed to agree that there should be three working groups: one on the prevention of massive human rights violations, as recommended in paragraphs 38 to 39 and 44 to 45 of the report of the fourth meeting of persons chairing the human rights treaty bodies (A/47/628); one on the working methods of the Committee, including the submission of reports, liaison with other human rights treaty bodies and ways of encouraging States to ratify the Convention; and a third on the consequences of the resolution just adopted by the Commission on Human Rights. He asked the Committee whether the working groups should be set up straight away.

31. Mr. BANTON (Rapporteur) said that the first and third working groups could be set up straight away, but the second, dealing with further ratifications of the Convention, required more consideration.

32. Mr. van BOVEN said that, although a working group on prevention was clearly necessary, he had doubts about the other two. The Committee had taken note of the resolution adopted by the Commission on Human Rights and it might discuss how it could best assist the Special Rapporteur to be appointed by the Commission, but surely a working group would not be needed for that purpose. If a separate working group were needed to discuss the working methods of the Committee, he felt that more consideration should be given to its terms of reference.

33. Mr. SHERIFIS said that there was no need to appoint a working group to discuss the resolution adopted by the Commission on Human Rights. He formally requested a closed meeting in which the Committee as a whole could discuss the issue.

34. Mr. RECHETOV said he doubted whether there was any need for working groups on the Commission on Human Rights resolution or on encouraging further ratifications of the Convention, which was surely a matter for the States concerned. As to the working group on prevention, he thought that it was more important to decide on its terms of reference than on its membership.

35. Mr. YUTZIS said that he had not intended the working groups to have formal terms of reference. It would save time to have small, informal working groups discussing the various issues and, if possible, preparing a draft recommendation or other text for the Committee to consider. Prevention of massive violations of human rights, for instance, was a new subject and it was important to summarize all the members' ideas so that it could be discussed rationally.

36. It was not only the content of the resolution of the Commission on Human Rights which deserved consideration; account should also be taken of the fact that the Committee had not been consulted about the Commission's appointment of a special rapporteur and the fact that the draft resolution had been submitted by a country which had not even ratified the Convention.

37. The CHAIRMAN suggested that a working group on prevention should be made up of Mr. Yutzis, Mr. Banton, Mr. van Boven and Mr. de Gouttes, along with any other member who was interested. However, a coordinator would also be needed.

38. Ms. SADIQ ALI suggested a working group made up of Mr. van Boven, Mr. Sherifis and Mr. Yutzis, with Mr. de Gouttes as coordinator.

39. Mr. de GOUTTES said that he would be honoured to act as coordinator of the working group, but considered that it should be open-ended, since the problem of prevention of human rights violations was a new and complex one.

40. Mr. YUTZIS said he supported the proposal that Mr. de Gouttes should be the coordinator of the Working Group on Prevention.

41. The CHAIRMAN, summarizing the discussion, said he took it there was agreement that a working group on prevention would be set up, with Mr. de Gouttes as coordinator. The group would be open-ended and as many members of the Committee as possible should participate. That would mean that the Committee no longer had to consider the possibility of establishing other working groups.

42. He proposed that the Committee should hold a closed meeting to consider the draft resolution recently approved by the Commission on Human Rights (E/CN.4/1993/L.20/Rev.1).

43. Mr. BANTON (Rapporteur) said that, if that were done now, there might be very little time left over to deal with the many other items on the Committee's agenda.

44. Mr. YUTZIS said he agreed that it would be better to continue discussion of the Committee's working methods in the public meeting and take up the question of the draft resolution at the end of the afternoon in closed session.

45. The CHAIRMAN invited Mr. Banton, Rapporteur, to introduce his proposals on the Committee's practice with regard to concluding observations.

46. Mr. BANTON (Rapporteur), introducing an informal paper entitled "CERD: New Procedures 1989-1992", said that the paper was basically a summary of the Committee's past practice. Paragraphs 1 to 3 described what had been done in respect of the appointment of country rapporteurs, while paragraph 4 contained his personal views on the benefits that had resulted from the country rapporteur system. Paragraph 5, based on the Committee's summary records, listed the decisions taken at preceding meetings, while paragraph 10 contained a proposed checklist of items for country rapporteurs to include in their draft concluding observations. He would suggest that, as was the practice, for example, in the Committee on the Rights of the Child, concluding observations should be considered in a closed meeting.

47. Under the sections headed "Non-reporting States" and "Liaison with other treaty bodies", he had summarized the action taken by the Committee so far.

48. He suggested that, where concluding observations were concerned, the method he had proposed in paragraph 10 should be used for the current calendar year only. The Committee would need to discuss other possibilities, and how far it could learn from the practice of other treaty monitoring bodies, with a view to developing new arrangements for the next session.

49. Mr. van BOVEN said that, while he was grateful to Mr. Banton for his efforts in preparing the paper, he would suggest that there were other possible approaches to drafting concluding observations. The Committee's current practice was that the country rapporteur was responsible for preparing the draft and that other Committee members then made an input on the basis of that draft. Another method might be to assign that task to the Secretariat, provided it had sufficient staff available. Alternatively, the country rapporteur, following the exchange of views with the representative of the State party, could summarize his impressions and formulate an opinion, on which other members could then give their views. That process could lead to the formulation of a consolidated opinion of the Committee, which might also be drafted by the Secretariat. He took it that Mr. Banton, in putting forward his proposals, was basing himself on existing practice, without ruling out other practices that might be considered in future.

50. As far as the checklist in paragraph 10 was concerned, he had some reservations about item (v), "The attendance of a strong delegation". He was not sure whether it was appropriate for the Committee to include a comment of that kind in its concluding observations.

51. While he could accept Mr. Banton's proposals on a temporary basis, he believed they should not be taken as the last word on the subject. It would be useful to look into the practices of other treaty bodies with regard to concluding observations.

52. Mr. RECHETOV said it was important that the task of preparing concluding observations should not be left to the country rapporteur alone: there should be an input from other members so that the final text would reflect the views of the Committee as a whole.

53. Although he appreciated Mr. Banton's good intentions in proposing the draft checklist in paragraph 10 of the paper, he wondered whether it might not have the effect of adding yet further to the number of guidelines that already existed. Although most items in the checklist were useful, he had some doubts about item (ix), which referred to "the mandatory nature" of articles 4 (a) and (b) of the Convention. He took it that the intent had been to emphasize the importance of those articles, but all other articles of the Convention were equally mandatory and to highlight one might imply that others were less important.

54. He agreed that the term "strong" in item (v) might give the wrong impression: a better term might be "qualified", or "competent". Thus, the Ukrainian delegation had consisted of only one person, but that person had been eminently qualified for his task and thus more effective than a delegation of 5 or 6 persons with a lower standard of expertise.

55. Mr. SHERIFIS complimented Mr. Banton on the useful paper he had submitted. It was helpful to have some kind of uniform presentation as guidance for country rapporteurs so that the concluding observations would do justice both to States parties and to the Committee.

56. However, if the paper was to be issued as a formal Committee document in the future, he believed it should avoid any reference to specific countries. He also suggested that a further item should be added to the checklist, namely, the question whether or not the reporting State had made the declaration under article 14 of the Convention. That would be a way of encouraging States which had not yet made the declaration to do so.

57. Mr. van BOVEN said he agreed that it was very important that that question should be included. The checklist should also contain a reference to any follow-up action the Committee might expect the State party to take, as was the practice, for example, in the Committee on Economic, Social and Cultural Rights.

58. Mr. BANTON (Rapporteur) explained that there was no mention of article 14 in the checklist because there had been no mention of it in any concluding observations adopted hitherto. The list was based on an analysis of past practice. Thus, the phrase "strong delegation" had been included simply because it had been used in the past. There should be no difficulty in making the amendments suggested.

59. Mr. de GOUTTES also thanked Mr. Banton for a useful paper which should be regarded as flexible, not as restrictive. However, he agreed with Mr. Rechetov that the Committee should not include too many items in the checklist: otherwise, it might find that its concluding observations were too long.

60. Mr. RECHETOV pointed out that the concluding observations would be read as part of the Committee's report. That report would in any case include a list of those States which had made the declaration under article 14.

61. Mr. SHERIFIS reiterated his view that there was no harm in the Committee expressing its appreciation in the case of States which had complied with their obligations and had made the declaration under article 14: that would encourage other States to do likewise. He wished his position on the matter to be recorded and formally proposed that an item concerning article 14 should be included on the checklist, preferably at the beginning.

62. Mr. SHAHI pointed out that the paper was an internal document, which had been drafted purely for the benefit of country rapporteurs. He did not see that there was need for any undue sensitivity about it, since it would not form part of any report submitted by the Committee.

63. The CHAIRMAN confirmed that Mr. Banton's paper was not intended as an official document. He was sure that Mr. Banton had noted the comments and suggestions made and would amend his proposals accordingly.

The meeting rose at 5.15 p.m.

CERD/C/SR.962
19 July 1993

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 962nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 4 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)*

Tenth periodic report of Algeria (CERD/C/209/Add.4)

1. At the invitation of the Chairman, Mr. Semichi (Algeria) took a place at the Committee table.

2. Mr. SEMICHI (Algeria) said that his country was committed to defending the principles set forth in the Convention, which was at the forefront of action by the United Nations to combat racism and racial discrimination, including its most vile manifestation, apartheid.

3. The Constitution of Algeria adopted by referendum on 23 February 1989 differed from its predecessor in that it contained new provisions on political and trade union pluralism, the strengthening of freedom of assembly and expression and the right to information, the consolidation of the independence of the judiciary and the wider use of universal direct and secret ballots. The Constitution also prohibited racism and all forms of racial discrimination and the legislation and regulations based on it provided for penalties for failure to comply with that important provision.

4. As the supreme source of national legislation, the Constitution was frequently quoted in Algeria's report (CERD/C/209/Add.4), which consisted of two parts. Part One described the legal framework for Algeria's campaign against racial discrimination, the status of the Convention under domestic law and the demographic composition of the population.

5. Part Two dealt with the implementation of articles 2 to 7 of the Convention. With regard to article 2, it was clearly stated that the fundamental law enabled legal protection and control of the action of the authorities to be guaranteed in a society characterized by the rule of law and the all-round development of the individual. Paragraph 55 of the report gave details of the Constitutional Council, which had considerable scope for controlling human rights laws and regulations.

6. The chapter on article 3 of the Convention gave a fairly comprehensive description of action by Algeria to combat racial segregation and apartheid.

7. The chapter dealing with article 4 described the legislative, judicial and administrative measures which had been taken by Algeria to give effect to the provisions of the article, particularly with regard to the exercise of trade union rights, the right to establish political associations and the

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* Resumed from the 959th meeting.

right of assembly and to hold demonstrations. Paragraph 82 of the report specified the penalties for any defamation committed against one or more persons belonging to an ethnic or philosophical group or to a particular religion.

8. The rights embodied in article 5 of the Convention were protected by article 28 of the Constitution, according to which citizens were equal before the law and no discrimination could be made on grounds of birth, race, sex, opinion or any other condition or personal or social circumstance (para. 83 of the report). Persons whose rights under article 5 had been violated could institute criminal proceedings (paras. 87 and 88 of the report).

9. The chapter relating to article 6 of the Convention dealt with the remedies available to victims of racial discrimination (paras. 175 to 178).

10. The chapter on article 7 referred to the measures taken in connection with education, culture and information to combat prejudices leading to racial discrimination.

11. The difficult situation in Algeria, where the state of emergency had just been lifted, in no way affected its traditional position with regard to action to combat racial discrimination or the determination of the people of Algeria to defend the ideals of freedom, justice and equality.

12. Mr. DIACONU, Country Rapporteur, said that democracy in Algeria seemed to have a solid legislative and constitutional basis, since pluralism and the rule of law were guaranteed by the Constitution. It was gratifying to see that, under the new Constitution, treaties ratified by Algeria ranked higher than the law and could be invoked before the courts. Although the report mentioned many Acts, unfortunately, little information had been provided on their practical implementation by the courts.

13. Although the Penal Code made frequent reference to ethnic, linguistic and religious groups, the Constitution did not mention them at all. Which legal provisions protected those groups and minorities? In particular, the Committee would welcome additional information on the Berber minority, on whether Berber was taught in primary and secondary schools and on whether all religions could be freely practised in Algeria.

14. The report seemed to indicate that Algeria had not adopted legislation prohibiting racial discrimination or taken any specific measures to that end. Did the Government of Algeria intend to rectify such an omission?

15. Paragraph 91 of the report stated that no political association could be established or pursue its activities on the basis of regionalist practices. What were the reasons for such a limitation? Did that mean, for example, that a Berber party could not be established?

16. Lastly, the Committee would like to know whether Algeria permitted dual nationality.

17. Mr. de GOUTTES thanked Mr. Semichi for introducing the report of Algeria, which, through its culture and history, played an important role on the world scene.

18. The major progress with regard to the implementation of the Convention which had been made since the submission of the preceding report in 1987 was to be welcomed. The 1989 Constitution thus provided for the rule of law, the principle of equality for all and the rejection of any form of discrimination. It should also be emphasized that the Convention took precedence over the law and could be invoked before the courts and that Algeria had ratified the two International Covenants on human rights in 1989 and had recognized the competence of the Committee under article 14 of the Convention to consider communications from individuals. It was to be hoped that the declaration of a state of emergency would not, as Mr. Semichi had stated, affect the enjoyment of fundamental rights.

19. The form of the report was coupled with the general guidelines laid down by the Committee, but, unfortunately, its content was too legal. The Committee would have welcomed more information on the actual implementation of the Convention, on the consequences of the state of emergency and the interruption of the electoral process and on Algeria's social, economic and demographic development. The next report should contain some social indicators, particularly with regard to unemployment, delinquency, drug addiction and illiteracy, which were often a good benchmark for measuring the level of integration of certain social groups.

20. The Committee would also have liked further information on the composition of the status of minority communities, including the Berbers, the Jews and the black population from the south of the country.

21. The second part of the report dealing with articles 2 to 7 of the Convention referred to many legislative texts, but did not explain clearly how the Convention was implemented in practice. The Committee would, for example, have liked to know whether discrimination in employment, acts of violence and incitement to violence directed against a race or group were indictable offences and whether racist organizations and propaganda activities had been outlawed.

22. Algeria's next report should contain statistics on the number of convictions for racist acts, since the Committee would then be able to determine the extent to which the Convention was being applied.

23. Ms. SADIQ ALI said that, according to Berber sources, the Government of Algeria was allegedly trying to stifle the Berber culture, mainly by not allowing the Berber language to be taught in primary and secondary schools. What exactly was the situation?

24. The Committee would also have liked some information on the situation of the Tuaregs, who lived in the south of the country and whose way of life had been completely disrupted by drought. Why had the agreement reached in

September 1990 between the Governments of Algeria, Mali, Niger and Libya and Tuareg representatives not succeeded in ending the violence? Why had 53 men from neighbouring Niger been arrested in September 1992? Had they now been released?

25. Had the agreements reached between Morocco and the Frente POLISARIO allowed the refugees who had been living in camps in south-west Algeria to return home?

26. She would also have appreciated information on illiteracy, housing and public services.

27. Mr. van BOVEN noted that the report provided very comprehensive information on legislation, but practically nothing on judicial practice. It had been noted with satisfaction that international conventions could be invoked before the courts and that Algeria had ratified many international human rights instruments. However, he would have liked information on the status of international conventions within the domestic legal system and on whether conventions were effectively invoked before the courts. To what extent were jurists and citizens acquainted with the texts? Generally speaking, although a number of countries had recognized the competence of the Committee under article 14 of the Convention, the Committee had received only three or four communications. Algeria was to be commended on being one of the few countries to have made the declaration under article 14, paragraph 1.

28. With regard to the information on article 4 of the Convention, he noted that, although the many legislative provisions mentioned were interesting, they were not specific measures aimed at eliminating acts of discrimination. The information on article 5 was also very general. The entire range of civil, political, economic, social and cultural rights contained in the two Covenants had been touched on, but the measures taken to prohibit and eliminate racial discrimination in the exercise of those rights or to guarantee everyone the right to exercise his rights without discrimination based on race, colour or national or ethnic origin had not been highlighted.

29. In connection with the implementation of article 2 of the Convention, he had some misgivings about paragraph 62 of the report, which stated that, since racist practices were alien to Algerian society, no specific measures had been necessary, and about paragraph 63, which stated that the Algerian people was so homogenous that no special measures had been necessary at the national level. In the light of article 1 of the Convention, very few countries could boast of a perfect situation. Furthermore, was it possible to speak of the homogeneity of the Algerian when the Berber culture existed, as referred to in paragraph 46 of the report, and there were some blacks in Algeria? From what he knew of the situation of blacks in Algeria, there was no denying that the State did not practise a discriminatory and racist policy. In fact, however, blacks were disadvantaged in comparison with Arabs and were subjected to exclusion; for example, some students apparently refused to share their room in university residences with a black person. Statistics dating from 1979 showed that, in the Oran region, the school enrolment rate was 85 per cent for Arab children, as opposed to 50 per cent for black children. In view of that situation, where racist practices were attributable not to the State, but to

individuals and groups, Algeria must not forget its obligations under article 2, paragraph 1 (d), of the Convention, providing that "Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization". When necessary, according to article 1, paragraph 4, and article 2, paragraph 2, of the Convention, States parties to the Convention had to take special measures to protect particular racial groups or individuals belonging to such groups.

30. He was fully aware of Algeria's present difficulties and the dilemma its leaders faced. Noting that the report referred frequently to the 1989 Constitution, he wished to know whether it was still in force or whether its implementation had been suspended because of the situation in Algeria.

31. Mr. SHERIFIS, noting that Algeria had always maintained a high standard of dialogue with the Committee, welcomed the fact that the Algerian delegation was headed by a high-level official. Furthermore, Algeria had been at the forefront of the international community's campaign against apartheid.

32. As far as the report was concerned, he was glad to see that, according to paragraph 39, treaties which had been duly ratified ranked second in the hierarchy of legal norms, coming after the Constitution and before the law. He also welcomed the statements made in paragraphs 47 and 48 of the report, according to which the Christian and Jewish communities had continued to enjoy freedom of religion after independence and any insult levelled against one or more persons belonging to an ethnic or philosophical group or to a particular religion was punishable under the Penal Code.

33. With regard to specific manifestations of Berber culture, he wished to know why the radio station which broadcast in Berber could be received only in the vicinity of the capital. Was that deliberate or were there technical reasons?

34. Like Mr. van Boven, he thought that no country was totally safe from acts of discrimination and he recalled the obligations of States parties under article 4 of the Convention.

35. He took note with satisfaction of the statement in paragraph 178 of the report that anyone who claimed to be the victim of a violation of his rights was entitled to bring a complaint before the competent courts and asked whether there had been any cases of that kind and how many.

36. The information on article 7 of the Convention was entirely satisfactory. In particular, he had noted with interest that the national media, both press, radio and television, regularly reflected the numerous debates, seminars, conferences and exhibitions which had been held on human rights in Algeria. He would like to know whether teaching on the rights protected by the Convention was part of school curricula.

37. He welcomed the fact that Algeria had recognized the competence of the Committee under article 14 of the Convention, something that only a small minority of States parties had had the courage to do. Thus far, the Committee

had received no communications from an Algerian national. Were citizens aware of the rights recognized by the Convention? Lastly, although the question was not directly linked to implementation of the Convention, he requested information on the particular difficulties Algeria faced at the present time.

38. Mr. GARVALOV said he found that the report was well presented, but was sorry that information directly relevant to the Committee had not been adequately highlighted. With regard to the demographic composition of the population, he had noted with particular interest that, according to the Constitution, "Algeria is a democratic people's republic; it is one and indivisible" (para. 44), that Islam was the State religion and that Arabic was the national and official language (para. 45), but also that "in addition to its Arabic and Islamic culture, Algeria also recognizes its 'Amazigh' or Berber culture and the fact that it is part of Africa and the Mediterranean" (para. 46). He also noted with satisfaction that the Christian and Jewish communities had continued to enjoy freedom of religion after independence. Even though that was not an issue of direct relevance to the Committee, it reflected an element of ethnic harmony that was to be welcomed.

39. Like other members of the Committee, he thought that no country could safely state that discriminatory practices did not exist in its territory. The report should have given some indication of the jurisprudence of courts with regard to possible offences of racial discrimination. Was the judiciary independent of the executive and free from pressure from political parties and trade unions?

40. Article 5 of Act No. 89-11 of 5 July 1989, which had been promulgated with a view to giving full effect to article 40 of the Constitution, laid down restrictive conditions for the establishment of political associations. Algeria apparently had very good reasons for including such a provision in its Constitution, mainly on the grounds of national security, and its representatives should provide further information on that point.

41. Lastly, he congratulated the high-level delegation representing Algeria before the Committee.

42. Mr. BANTON said that, as the former Country Rapporteur for Algeria, he found that the authors of the latest report submitted to the Committee had been more open-minded than in previous reports. That development was probably the result of the events of 1989.

43. The report quite rightly began with an outline of Algeria's policy. If that policy was considered to be preventive in nature, it could be assumed to have a protective function. If that was the case, who was it designed to protect?

44. With regard to the demographic composition of the population, he was not convinced by the argument contained in paragraph 41 of the report. Although population censuses were in fact never based on ethnic criteria, population statistics could be based on other sources. Paragraph 46 of the report stated that the "Amazigh" (Berber) language was taught at university level, but nowhere was there any mention of it or any other language other than the

official language being taught in primary or secondary schools. If non-official languages were being taught at such a level, the Ministry of Education presumably had figures on the number of pupils receiving such instruction. On the basis of those figures, it should be possible to calculate the percentage of the population which could be classified in the different linguistic categories and thus to arrive at more precise demographic statistics. As the General Assembly had invited the Committee to give due attention in its work to the Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, he wished to know which minorities the Government of Algeria recognized as such. Paragraph 46 seemed to indicate that the State recognized the Berbers as a linguistic minority. It might also be possible that the members of that minority had a different perception of what classified them as a minority. From what he had read, it seemed that persons claiming to belong to the Berber minority believed that they had distinctive cultural characteristics. Was there a Berber population in Algeria's neighbouring countries? If so, the question of Berber nationality might arise. If Berbers could be regarded as an ethnic and linguistic minority, could it not also be recognized that they had a cultural identity? Was there a difference of opinion on that issue between the State and the Berber minority? In their statements, representatives of the Berber minority had complained of a number of measures taken by the State allegedly forcing them to assimilate. As such statements had been made before 1989, it would be useful if Algeria could provide clarification in its next report.

45. Mr. YUTZIS noted that the members of the Committee, like those of other human rights treaty monitoring bodies, often found themselves in an ambivalent situation partly as a result of the universal nature of the Convention and partly because of the fact that they were necessarily faced with the particular situation of some States which, following decolonization, were finding it extremely difficult to establish democracy and bring about sustainable development.

46. The concept of "minority" was, however, very difficult to define because it involved linguistic, ethnic, religious and cultural criteria and the peoples which classified themselves as minorities rejected arbitrary definitions.

47. In its report, Algeria emphasized its national homogeneity, a premise which had always given rise to discussions in the Committee, since it presupposed whether consciously or unconsciously, a certain lack of understanding of ethnic, linguistic, religious or national minorities.

48. Article 5 (d) (vii) of the Convention embodied the right to freedom of thought, conscience and religion. However, article 9 of Act No. 89-28 of 31 December 1989 relating to public meetings and demonstrations stated that "It is forbidden to abuse any of the symbols of the 1 November 1954 revolution or to commit a breach of public order or morals during a meeting or demonstration" (para. 75 of the report). That provision was in keeping with article 9 of the Constitution, which stated that "Institutions shall prohibit ... Practices contrary to Islamic morals and to the values of the November revolution" (para. 77), and article 5 of Act No. 89-11 of 5 July 1989, which provided that no political association could engage in "behaviour contrary to

Islamic morals and to the values of the revolution of 1 November 1954" or "be established or pursue its activities on an exclusively religious, linguistic or regionalist basis or on the basis of belonging to a particular sex or race or of having a specific occupational status" (para. 91). Such principles, which might be the basis for the concept of national homogeneity, gave rise to tremendous problems with regard to recognition of religious minorities or denominations which wanted to express themselves freely through their symbols, forms of worship and practices. They might also be said to reflect a restrictive approach to freedom of conscience and religion in a country which claimed to have an official religion. In that regard, it might well be asked what the criteria were for characterizing certain practices as contrary to Islamic morals or the values of the November revolution.

49. The CHAIRMAN, speaking as a member of the Committee, commended Algeria on the quality of its report and welcomed the information that, under article 123 of the Constitution, treaties ratified by the President took precedence over domestic legislation. Algeria had recently ratified four important instruments concerning the protection and defence of human rights. As could be seen from paragraphs 65 and 66 of the report, moreover, Algeria had always doggedly campaigned against apartheid and racism.

50. Noting that, under article 5 of Act No. 89-11, "no political association may be established or pursue its activities" on a "regionalist basis" (para. 91), he said that the aim of the provision was to avoid regionalism, which might reflect certain tendencies designed to undermine national unity. In that regard, the article was not in conformity with article 40 of the Constitution, which recognized the right to create political associations in so far as they did not infringe basic freedoms, national unity, territorial integrity, the independence of the nation and the sovereignty of the people.

51. He requested further information on the Berber population, its characteristics and the conditions under which it was developing.

52. Mr. SEMICHI (Algeria), replying to the questions and comments by the members of the Committee, said that he wanted to provide a basic legal clarification in response to a question by Mr. van Boven, who had asked whether the 1989 Algerian Constitution was still in force or whether it had been suspended. That question had also recently been asked by the International Commission of Jurists. He wished to make it quite clear that the Constitution was still in force and that the measures which had been taken with regard to security and the state of emergency were based on specific articles of the Constitution. The state of emergency had been decreed on the basis of articles 74.6, 86 and 116.1.

53. The ethnic composition of the Algerian people, about which questions had also been asked, was, unfortunately, somewhat uncertain as a result of attempts to spread propaganda or simply failure to understand the true situation in the country. Arabs, Berbers, M'zabites and Tuaregs lived in Algeria. It was a Mediterranean country where, as the other countries of the region, there had been major population movements over the years so that it could make no claims to any kind of ethnic purity or homogencity. However, it could not be said that there was a Berber minority in Algeria. Berbers lived

mainly in three regions: Kabylie, a region near Algiers with some 4 million inhabitants; in the Aurès in the east of the country with some 8 to 9 million inhabitants; and in the south, where there were 1 million inhabitants. Looking at those figures in relation to a total population of 23 million persons, it was difficult to talk of a minority. In addition, the Berbers did not all live in their region of origin; they were scattered throughout Algeria, like the M'zabites. It would therefore be wrong to say that Algeria had areas populated by minorities. He emphasized that, in affirming that the People's Democratic Republic of Algeria was "one and indivisible", article 1 of the Constitution accurately reflected the true situation.

54. There was no discrimination based on languages. The Berber or Amazigh language was widely spoken in regions with a Berber population, in particular in Kabylie, but for the time being, there was no well-structured written language. Even those calling for the development of the Berber language believed that it was still too rudimentary to be taught in primary or secondary schools; it first had to be consolidated through research and university academic work. The teaching of Berber was thus a matter of time.

55. Some members of the Committee had found that the statements in paragraphs 62 and 63 of the report concerning the non-existence of racial discrimination in Algeria were too peremptory. He recognized that, although those statements reflected the generous nature of the Algerian people, they should be toned down in future because, so far, no people had achieved perfection in terms of race relations.

56. In response to a question raised by Mr. Diaconu concerning religious freedom, he referred to his country's history. Before independence, there had been three major religious communities: some 1.5 million Christians, 800,000 Jews and 10 million Muslims. Decolonization had been accompanied by an exodus of Christians and Jews, but it had not been a forced exodus. At present, non-Muslim religious minorities were much smaller, but they could freely practise their religion. There were synagogues and a Jewish consistory which was presided over by a lawyer from Algiers. Jewish religious services were announced in the press. Catholics came under the spiritual guidance of Monsignor Duval, the Archbishop of Algiers, who had become an Algerian citizen and enjoyed all civil and political rights. The Ministry of Religious Affairs was responsible for maintaining places of worship.

57. Mr. Diaconu had also asked about dual nationality. It should be remembered that many Algerians had emigrated, particularly to France. In many cases, the Algerians living in France had taken French nationality. Algeria had no specific texts recognizing dual nationality, but, in practice, persons who had been granted French nationality did not lose their Algerian nationality. Arrangements for such persons had been made at the governmental level, especially with regard to military service: persons with dual nationality could choose to serve in either country.

58. In connection with freedom of association, it had been asked why it was prohibited to establish regionalist parties. Admittedly, that might seem surprising at a time when the trend was, rather, to encourage regionalist associations and movements in order to strengthen people's ties to the place where they lived. However, in Algeria's case, it should be remembered that the Algerian people had been depersonalized by colonization and had achieved

independence in difficult conditions. At the time of independence, there had been threats of the dismemberment of Algerian territory and of secession precisely along regionalist lines. It was understandable that a Government which had to deal with such threats had to take precautions. In Algeria, regionalist activities were therefore encouraged at the cultural level, but not when they were used as political platforms.

59. Mr. de Gouttes had noted that Algeria had had the courage to agree, in accordance with article 14 of the Convention, to recognize the Committee's competence to receive communications. That decision proved that Algeria was determined to resist discrimination and reflected the generosity of the Algerian nation in fulfilling its international obligations. Mr. de Gouttes had also requested that Algeria's next periodic reports should include social indicators showing the situation with regard to unemployment, drug addiction, illiteracy, etc. Recommendations to that effect would be made to the competent authorities in Algeria.

60. Having already mentioned the Berbers' position in the Algerian nation, he still wanted to reply to the observations made on possible obstacles to Berber culture. He assured the members of the Committee that the Algerian people saw things differently and that, in Algeria, there were no obstacles in the way of any culture. There were radio stations which broadcast in French, Berber and Arabic. He found that, in Geneva, he could hear broadcasts in Berber more easily than in the other languages. Ms. Sadiq Ali had said that the Government was promoting all aspects of Arabic life and culture at the expense of the Berber language. He had already shown that that was not true, and also stressed that unity between Berbers and other population groups was promoted by the fact that, in Algeria, there was only one form of Islam, namely, Sunni Islam, and it was the same for Arabs, Berbers and M'zabites. Mr. Sherifis had also referred to complaints of alleged discrimination against the Berber culture. He confirmed that there was a large Berber population in Kabylie, but it did not suffer any discrimination and had not made any particular claims with regard to its position in the mass media.

61. Turning to the role of the Minister of Human Rights, he said that the Minister had been appointed 18 months previously and had been in office for 8 or 9 months. He had now been replaced by a "national human rights observatory" in accordance with the wishes expressed in the General Assembly and Commission on Human Rights resolutions encouraging the establishment of national institutions to monitor the human rights situation in a particular country. The national observatory included representatives from the non-governmental human rights organizations and institutions such as the Ministries of Justice and Education, as well as the bar. Its main objective was to further human rights education among the population and in institutions.

62. A question had also been asked about the nomads in the south of the country. They traditionally practised transhumance and trading between the south and north of the Sahara. At present, the nomad population in Algerian territory was fully integrated and often stayed in one place. However, the nomads in the north of Mali and Niger, which had maintained the same ancestral practices of transhumance and trading, had had problems with the Governments of those countries that had ended up in guerrilla activity. The good offices of the Government of Algeria had been sought to help solve those problems. An

agreement had been reached in Tamanrasset with the factions from Mali and then with those from Niger. The refugees in southern Algeria were not Algerians and they were not persecuted. A solution to the problem was in sight thanks to Algeria's good offices. The nomad population of Algerian nationality was certainly not subjected to repression.

63. Ms. Sadiq Ali had mentioned the 53 persons from Niger arrested in September 1992. The incident had taken place following armed attacks on the Government of Niger. As a result of the agreements reached between Niger and the armed factions through Algeria's good offices, Algeria had refused to continue being used as a strategic operational base. However, there had been no repression or interference in the affairs of another State.

64. With regard to the conflict between Morocco and the Frente POLISARIO, the Committee was aware that a settlement had still not been reached. The Saharan refugees in Algeria had still not returned home. As to the Security Council resolution calling for the implementation of the settlement plan for the Western Sahara, he stressed that the referendum to be held on the basis of the settlement plan was being delayed by organizational difficulties and disagreement between Morocco and the Frente POLISARIO. However, political agreement between the two parties was a prerequisite for progress. Until such an agreement had been reached, it was impossible to repatriate the refugees, although the means to do so existed and funds had been provided by the international community. The operation would take between three and four weeks.

65. He had been surprised by the reference that had been made to an incident involving five black students at the University of Oran. He emphasized that since independence, the University of Oran, like the Universities of Algiers and Constantine, admitted many African students. Many ambassadors from Guinea, Mali and Niger had studied in Algeria. The black community in Algeria was very small, had lived there for a very long time and had not been subjected to discrimination, especially at the university level. It had also been noted that there were no black actors in the films by the director Lakhdar Hamina. It was, however, difficult to ask a film director to comply with quotas for actors.

66. It had also been asked whether courses on the International Convention on the Elimination of All Forms of Racial Discrimination were given in schools. Such courses were an ideal which was not immediately attainable in a country such as Algeria and many others which first had to deal with enormous problems of providing the population with schooling.

67. Lastly, he said that he was ready to reply to the best of his ability to the other questions the members of the Committee might wish to ask.

68. The CHAIRMAN suggested that the Algerian delegation should continue its replies to the questions and observations made by the Committee at the following meeting.

The meeting rose at 1 p.m.

CERD/C/SR.963
10 March 1993

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 963rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 4 March 1993, at 3 p.m.

Chairman: Mr. DIACONU

later: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Tenth periodic report of Algeria (CERD/C/209/Add.4) (continued)

1. Mr. SHAHI thanked the Algerian representative for the excellent report (CERD/C/209/Add.4) and the supplementary information he had given. The situation described in the report had doubtless changed greatly since the declaration of the state of emergency in Algeria in February 1992 and he hoped that the next periodic report would give full details of the consequences for civil and political rights, particularly the electoral system. He had welcomed the Algerian representative's statement about the "homogeneity" of the Algerian people, which had been asserted rather too strongly in paragraph 63 of the report. Few peoples could claim to be genuinely homogeneous.

2. He asked the Algerian representative whether certain professions were forbidden to join political parties in Algeria. He believed, for example, that judges were not allowed to join political parties, but what about Government employees? Membership of a political party might affect a Government employee's neutrality.

3. He would welcome more details about the new national commission for human rights which had replaced the ministry responsible for human rights. Who appointed the members of the new commission, did it have a statutory basis and how independent were its judgements? What role did it have besides the monitoring of respect for human rights?

4. According to paragraph 91 of the report, no political association could be based on "Behaviour contrary to Islamic morals and to the values of the revolution of 1 November 1954". Some members of the Committee had been concerned that the provision might affect the rights of Jews and Christians in Algeria. He would welcome more information about the concepts of "Islamic morals" and the "values of the revolution".

5. Mr. SHERIFIS said that he had earlier questioned the statement in paragraph 46 of the report about radio broadcasts in the Berber language because he had received allegations that those broadcasts could be heard only near the capital, Algiers. He fully accepted the Algerian representative's statement that the broadcasts could be heard over a wide area and that he had even been able to receive them in Geneva.

6. Mr. van BOVEN thanked the Algerian representative for his informative answers. In respect of the question he had raised at the preceding meeting, he was prepared to accept that the black population of Algeria was much lower than in neighbouring countries and that the figures he had quoted were perhaps out of date; for instance, the figures he had quoted about black university entrants dated from 1988. Nevertheless, the number of black Algerians in higher education still seemed very low.

7. He would welcome more information on the death penalty, although that question did not, strictly speaking, fall within the Committee's mandate. He had read a number of recent press reports stating that the death penalty had been imposed in Algeria.

8. He would also welcome further information about the teaching of the Berber language in Algeria. Were the courses referred to in paragraph 46 merely intended to assist study of the Berber culture or were they genuine language courses at a variety of levels?

9. Mr. BANTON said that, at the preceding meeting, the Algerian representative had stated that Berber was not yet considered a language in its own right in Algeria, although it was on the way to becoming one. He would welcome a clarification in the next periodic report of the criteria used by the Algerian authorities in defining a "language". It might be, for example, that the authors of the report had employed a definition of a language prevailing at the time of their own education and that up-to-date specialist advice might be sought. He would also like to know how long Berber had been a written language, since communications sent to the Committee conflicted with the information given by the Algerian representative.

10. Ms. SADIQ ALI said that, if Berber was taught at university level, it must surely be a language in its own right. In that case, why was it not taught at primary and secondary level, too? She would also like to know what religion the Berber people practised. Perhaps Algeria could provide information about the Berber community in a separate section of the next periodic report.

11. Mr. de GOUTTES asked whether any political organizations had actually been banned for behaviour contrary to Islamic morals and the values of the revolution of 1 November 1954, as referred to in paragraph 91 of the report.

12. Mr. YUTZIS asked what constituted behaviour "contrary to Islamic morals". Who defined such behaviour - the State, the administration, religious authorities or some combination of the three? Did the provision prohibit the founding of a political party based on a religion other than Islam?

13. Mr. Valencia Rodriguez took the Chair.

14. Mr. SEMICHI (Algeria) said that he would do his best to answer the Committee's additional questions. Mr. Shahi had asked whether any professions were banned from joining political parties: under article 9 of the Constitution, judges, members of the armed forces and police officers were not allowed to be active members or executive officers of political associations (CERD/C/209/Add.4, para. 91). In reply to other questions asked at the preceding meeting about the judiciary, he said that there were some 1,700 judges in Algeria, including 250 women at all levels right up to the Supreme Court. Judges had their own representative and disciplinary body, the Supreme Council of the Judiciary, and they also had two trade unions.

15. Mr. Shahi had asked about the activities of the national commission on human rights (Observatoire national des droits de l'homme). The commission was under the direct authority of the President and its administrative and financial autonomy were guaranteed. Its task was to protect the fundamental rights and freedoms of citizens, to take action of all kinds to combat human rights violations and to promote information about human rights. It submitted an annual report on the human rights situation to the President of the Republic and the President of the National People's Assembly, which was made public two months afterwards. He had further information which he would pass on to Mr. Shahi.

16. Several members had asked what was meant by the terms "Islamic morals" and "the values of the revolution of 1 November 1954" referred to in the context of article 5 of the Algerian Constitution. Islamic morals were comparable to the morals of major monotheistic religions such as the Judeo-Christian religion in the sense that they were based on universal human values and extolled the virtues of charity, fraternity and solidarity. The values of the revolution of 1 November 1954, on the other hand, were values unique to Algeria; they were based on the principles that Algeria should be a republic, that its national language should be Arabic and its national religion Islam and that its territory should be one and indivisible. All political parties and all sectors of society in Algeria subscribed to those values.

17. Mr. Yutzis had asked whether there was not a certain contradiction between adherence to the values of Islam and the functioning of political parties, such as the Christian Democrat party: in fact, no such contradiction existed. The Christian Democrats were free to operate within the context of Christian ideals, while at the same time working to bring about progress in Algerian society in the same way as other political parties. Those political parties which espoused Islamic ideals were as open-minded as any other and their faith was in no way an obstacle to them in their pursuit of modern and progressive objectives.

18. He thanked Mr. Sherifis for clarifying certain allegations that had been made with regard to the reception of radio broadcasts. In fact, it was easy to pick up Algerian broadcasts even in Geneva, which was at a far greater distance than the regions of Algeria which had claimed not to be able to receive them. Such allegations did not warrant serious consideration.

19. Mr. van Boven had asked about numbers of black Algerian students: he would need time to consult his authorities in order to produce the necessary figures. A further question had been raised in respect of censuses. He pointed out that a census, if scientifically conducted, was not simply a matter of counting heads; it included a number of specific questions, the answers to which had to be analysed. While the initial results could provide a global population figure, considerable time, effort and expenditure were needed to obtain an accurate picture. Even in the most advanced countries, it was often four or five years before conclusions could be drawn from the data obtained.

20. Mr. van Boven had also referred to Berber minority groups. Although he had replied to that question earlier, he would return to the subject, since the question was a very important one and he would not like it to be misunderstood. The term "Berber" derived from the Latin and denoted peoples who were "barbarian" or "foreign" in the sense that they were outside the boundaries of the Roman Empire. The term "Berber" did not form part of Algerian culture and tradition and was not used in Algeria.

21. However, there did exist in Algeria ethnic populations which claimed to be descended from tribes of great antiquity outside the mainstream of the civilizations of the Mediterranean region. They fell into three main groups, corresponding to three different regions of Algeria: the Amazigh group was to be found chiefly in the Kabylia region. They comprised in total more than half the entire population and participated fully and on a basis of equality in Algerian life: they could thus hardly be regarded as minorities, and were in no sense marginalized. Within a common cultural framework, the flourishing of specific regional cultures was encouraged.

22. It had been asked why the Amazigh language currently being taught at the University of Tizi-Ouzou, mentioned in paragraph 46 of the report, could not also be taught in primary and secondary schools. The University was carrying out research into the origins and structure of the Amazigh language, as a preparation for teaching it on a wider basis at a later stage. The point had not yet been reached when it would be possible to teach such languages in schools.

23. It had also been asked whether any political parties had been banned because their programmes did not conform with Islamic morals or with the values of the revolution of 1 November 1954. There were currently 67 political parties in Algeria and over 20,000 associations of various kinds, which had full freedom to pursue their activities. Only one political party, the PPA, which had been active during the war of liberation and which had fomented internal dissensions and civil strife, resulting in the fragmentation of the liberation movement, had had its application for recognition rejected by the Ministry of the Interior when it had sought to re-establish itself following independence. That decision by the Ministry of the Interior had subsequently been upheld by the Supreme Court.

24. Mr. GARVALOV said he was grateful to the Algerian representative for his explanation that, in Algeria, "Islamic morals" meant essentially the same as the morals of the Judeo-Christian religion and were in effect basic human values. Had other values been implied, article 5 of the Algerian Constitution might have been seen as in contradiction with the provisions of the Convention.

25. The CHAIRMAN said that the Committee had now concluded the first part of its consideration of the report of Algeria (CERD/C/209/Add.4). He thanked the representative of Algeria for his cooperation and for his comprehensive replies to questions raised by members of the Committee.

26. Mr. Semichi (Algeria) withdrew.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SEVENTH SESSION (agenda item 2) (continued)*:

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (GENERAL ASSEMBLY RESOLUTION 47/79);

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION 47/111) (continued)

27. Mr. BANTON, referring to the Secretariat paper of 19 February 1993 containing a summary of action taken by the General Assembly at its forty-seventh session on the annual report of the Committee and the effective functioning of United Nations human rights instruments and effective functioning of bodies established pursuant to such instruments, said that he had three questions to raise with regard to a resource centre: first, whether the proposal for such a centre had been analysed; secondly, whether there had been any consultation with the United Nations library; and, thirdly, whether some partial funding arrangement could be made if complete funding could not be found. He understood that there had been some further discussion of the proposal since the fourth meeting of persons chairing the human rights treaty bodies, but the idea might be given additional momentum if the Committee were to support it.

28. His own suggestion would be that the Centre for Human Rights should decide to establish a resource centre, even if certain questions remained about where it was to be located. Having reached a decision in principle, the Centre might then write to Member States of the United Nations inviting them to supply the new centre with copies of the annual reports of human rights institutions in those States. The problem of costs could be solved if States could arrange for such institutions to send complimentary copies automatically to the resource centre.

29. The volume of material thus collected would soon increase and could not be kept in the resource centre indefinitely: at some stage, it would need to be put on microfilm and stored in the library. There would thus be need for a common database, available both to the library and to the resource centre. There had been some dispute about the nature of that database: he stressed that it should be common to the extent that staff in the resource centre should know what was available in the library and staff in the library should be aware what was available in the resource centre.

30. He hoped that the resource centre could also obtain a complete set of reports from non-governmental organizations bearing on human rights matters. It might also obtain material on State legislation. The Centre for Human Rights had already collected a mass of information from States with a view to

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* Resumed from the 960th meeting.

preparing a global compilation of legislation against racial discrimination: that material ought not be dispersed, but archived in such a way as to make it readily accessible.

31. The members of the Committee might also have occasion to refer to the constitutions of countries: the texts of constitutions could easily be kept on a computer record so that they could be called up when required.

32. The Centre for Human Rights had understood that, in setting up such a resource centre, it would need advice from professional librarians. He pointed out, however, that professional librarians were equipped to deal with means, but not with ends. It was for the members of the Committee to decide what documentation they would need so that the librarians could be instructed accordingly. He hoped that the Centre would shortly be writing to members of all human rights treaty bodies, asking them to decide what material they wished to be stored in the resource centre.

33. Lastly, he suggested that, whenever new members were elected to treaty bodies, arrangements should be made for them to be given a conducted tour of both the library and the resource centre and informed what assistance was available to them in making use of the material they contained.

34. If those proposals met with the Committee's approval, he suggested that they should be incorporated in its report in order to reinforce the recommendations made in that connection in the report of the fourth meeting of persons chairing human rights treaty bodies (A/47/628).

35. Mr. van BOVEN said that the issues raised by Mr. Banton on sources and types of information were crucial to the Committee's work. From a practical point of view, the Committee should probably think in terms of achieving its objective in three stages. The first related to country files. United Nations material had already been provided, could be expanded by information from specialized agencies and even from regional organizations such as the Organization of American States and the Council of Europe and could be easily accessible by means of modern technology. There was no reason why such files could not be made available from the beginning of the Committee's next session, at least as far as additional United Nations material was concerned.

36. The second stage, which would depend on available resources and expertise, would relate to the resource centre, where thematic materials, materials from non-governmental organizations and State legislation, for example, could be stored and made available. The third stage would involve the establishment of a proper database.

37. It was particularly important that the Committee should set a time-limit for the achievement of those targets and, to start with, it should formally request that country files should be made available as from the beginning of its August 1993 session. The other issues mentioned by Mr. Banton could be referred to in the Committee's report.

38. Mr. GARVALOV said that the paper under consideration included many new points that would have to be incorporated into the Committee's methods of work. It also gave the Committee an opportunity to look at its work from a broader point of view. Although the Committee's mandate was determined by the Convention, the suggestion that treaty bodies might become involved in early-warning activities and preventive diplomacy, particularly in cases of massive human rights violations, was a new departure which would enable the Committee to realign its own thinking in terms of recent developments in the world and to become more effective.

39. The question of the universality of the treaty system and that of the primitive working conditions of the Centre for Human Rights had also been discussed by the General Assembly, as had the fact that only 1 per cent of the United Nations budget was devoted to human rights. He had seen many changes in the Organization's priorities over the years, but had yet to see human rights figure among them. Since massive human rights violations were now leading to clashes, conflicts and even outright war, it was time for human rights to be placed, if not at the top, then high on the United Nations list of priorities, and for its budget to be amended accordingly.

40. It was encouraging that the work of the Human Rights Committee had been discussed extensively by the General Assembly and that it had been commended on its decision to adopt concluding comments on States reports reflecting the views of the Committee as a whole. A new element, however, was the suggestion that the Committee should draft comments on article 27 of the Covenant dealing with the rights of minorities. The problem was that comments were being requested on an international instrument which was already in force and had been ratified by many States parties. Article 27 had always been a difficult area in discussions on the rights of minorities and delegations either based themselves on it or avoided it completely, depending on their positions. If the Committee on the Elimination of Racial Discrimination decided to hold its own discussion of article 27 of the Covenant, it should bear in mind that some instruments relating to European regional organizations went beyond the provisions of article 27. There was nothing wrong in trying to update wording to keep abreast of world events, but, as the Committee had seen during its discussion of the resolution adopted by the Commission on Human Rights on measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/1993/L.20/Rev.1), even the Commission had difficulty ensuring that the wording it used was consistent with that of earlier resolutions.

41. He had also been glad to see that a number of delegations in the General Assembly had pointed out that information from non-governmental organizations greatly facilitated the work of treaty bodies. The Committee on the Elimination of Racial Discrimination had already clearly stated its position on that issue.

42. The question of States parties which did not submit their periodic reports on time had also been discussed. As a remedy, such countries might be asked to supply additional information within a period of six months.

According to article 9 of the Convention and rule 65 of the rules of procedure, the Committee was entitled to formulate such a request, which would make the reporting State more aware of its obligations.

43. At a time when much pressure was being placed on United Nations treaty bodies and on the international community as a whole, progress might be made if States parties and the General Assembly were to look into ways of updating the Convention. It had already been pointed out in an earlier discussion that the Convention was based on concepts which had been very relevant at the time when it had been drafted more than 25 years previously, but it had been overtaken by new concepts which needed to be considered as soon as possible.

44. Mr. DIACONU, referring to the paper under consideration, said that the idea of establishing an international human rights court with compulsory jurisdiction was rather unrealistic in view of the problems involved in setting up an international court to try war crimes and crimes against humanity perpetrated in the former Yugoslavia. Even the establishment of a court to try human rights violations would be virtually impossible at the present time. The Committee should therefore try to identify the recommendations and ideas which would be useful to its own work.

45. There was clearly some merit in drafting comments on articles of the Convention, as the Human Rights Committee was doing, but, in order to do so, the Committee would have to review its working methods and discuss each of the articles of the Convention at length to arrive at a general interpretation. Such an exercise would be useful, but he doubted whether he personally could take on a commitment of that kind.

46. A resource centre which would be available to the members of the Committee would be a valuable asset, but it would have to be as complete as possible and provide all the necessary information. It must not become a repository for outdated documents, but must contain all the latest reports and information dating back only two or three years, so that the current situation in each country would be immediately apparent. Care should also be taken to ensure that the documentation was complete, particularly in the sense that any communication to States parties was accompanied by the relevant reply. In addition, country files should not be kept in a library where they would be generally available.

47. Mr. Garvalov's idea of requesting States parties to provide additional information within a given time-limit was a good one, but it should not become the general rule; additional information should be requested only if needed.

48. Mr. RECHETOV said that, in the last line of the fourth paragraph of section (b) of the paper under consideration, newly independent States should be referred to as "successors" to the obligations arising from human rights instruments, rather than as "inheriting" those obligations.

49. In the past, States had fallen into two groups with respect to the Convention: they had either ratified or acceded to it or they had decided not to do so. The latter were generally democratic countries which had made their decision on the basis of legal reservations in respect of certain articles. A

third group had, however, recently emerged, namely, States which had come into existence as a result of the collapse of certain countries; in some of those States, the human rights situation, and inter-ethnic relations in particular, needed careful monitoring. Only five of the former Soviet republics and two of the Baltic States had become parties to the Convention, while the States of Central Asia and the three trans-Caucasian republics, two vast areas with enormous populations, had not. The Committee needed to examine the reasons why countries in that third group had not ratified or acceded to the Convention. A number of the newly formed States had not made declarations under article 14 of the Convention, and that gave rise to a serious problem in view of the economic and political conditions in those States. The Commission on Human Rights was currently preparing a draft resolution which appealed to those States to fulfil their obligations under the international human rights instruments. The Committee might consider adopting a similar resolution making particular reference to the International Convention on the Elimination of All Forms of Racial Discrimination.

50. Mr. de GOUTTES thanked Mr. Banton for drawing attention to the proposed resource centre. He fully endorsed the idea of establishing such a centre, which would greatly facilitate the Committee's work. As the situation currently stood, the documentation provided by the Secretariat and by non-governmental organizations was useful, but not adequate. The centre would serve to centralize all the information, thus enabling the Secretariat to prepare a complete set of documents to accompany each country report. The centre would also serve as a repository for documentation collected by members of the Committee, who often received human rights documents from national and regional bodies.

The meeting rose at 5.20 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 964th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 5 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (*continued*)

Eighth periodic report of Qatar (CERD/C/207/Add.1)

1. *At the invitation of the Chairman, Mr. Al-Thani, Ambassador of Qatar to the United Nations Office at Geneva and the specialized agencies in Switzerland, and Mr. Kharma, adviser to the Permanent Mission of Qatar, took places at the Committee table*.

2. *Mr. AL-THANI* (Qatar) said that, since its accession to the International Convention on the Elimination of All Forms of Racial Discrimination, Qatar had tried to submit its reports in accordance with the Committee's guidelines. The eighth periodic report (CERD/C/207/Add.1) set out, in part I, the general measures taken by Qatar to prevent racial discrimination; part II described in detail the legislative, administrative and judicial measures taken to give effect to articles 2 to 7 of the Convention; and part III contained the clarifications provided in response to the requests made by the Committee when considering previous periodic reports.

3. It was stated in part I that, pursuant to article 9 of the Provisional Constitution of the State of Qatar, all persons were equal without distinction as to race, sex or religion. The promulgation of any legislation permitting such discrimination was thus prohibited. Moreover, article 5 of the Provisional Constitution affirmed the State of Qatar's belief in the principles contained in the Charter of the United Nations, which, as everyone knew, ruled out discrimination. Discrimination was likewise prohibited under the Islamic Shariah, which constituted the principal source of Qatar's legislation.

4. He recalled that his country had acceded to the International Convention on the Elimination of All Forms of Racial Discrimination on 23 July 1976, after having acceded, on 18 July of that year, to the International Convention on the Suppression and Punishment of the Crime of Apartheid. Both those conventions had binding force in Qatari domestic law and could be invoked before the courts.

5. Qatari courts were not empowered to punish an act of discrimination unless it constituted an offence under the law. They could, however, award compensation for damages arising out of an act of racial discrimination by invoking article 4 of the Civil and Commercial Code, which empowered them to apply the principles of the Islamic Shariah in the absence of any applicable legislative provision or customary practice. In addition, the Shariah courts could impose a penalty, which was left to their discretion, for an act involving racial discrimination or segregation.

6. In view of the aforementioned provisions and the fact that acts of racial discrimination were unknown in Qatari society, the State of Qatar had not found it necessary to promulgate specific legislation. In Qatar, in

conformity with the teachings of Islam, the notion of superiority of Arabs over non-Arabs or of whites over blacks did not exist, except in terms of piety.

7. Likewise, in its foreign policy, Qatar was resolutely opposed to racial discrimination; to that end, it had promulgated Decree No. 130 of 1973 suspending the export of petroleum from Qatar to South Africa and Decree No. 140 of the same year severing economic, trade and cultural relations with that country.

8. Part I of the report also showed that, according to the census conducted in 1986, there had been 369,079 inhabitants in the country at the time, including the members of foreign communities - Asians from India, Pakistan, Afghanistan, Iran, Thailand, the Philippines, Japan and China, Arabs and non-Arabs from African countries and Europeans from Great Britain, France, Germany, Italy, Greece and other countries.

9. After drawing attention to the information in part II of the report relating to articles 2 to 7 of the Convention, he read out replies, as contained in part III, to the questions asked by the Committee when considering the fifth, sixth and seventh periodic reports. With regard to the last question, relating to measures taken by the State to make the population more aware of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, the Charter of the United Nations and the Universal Declaration of Human Rights, he supplemented the reply contained in paragraph 41 by adding that the media, including television, drew attention to the provisions of international instruments relating to racial discrimination. Lastly, he assured the members of the Committee that his delegation was entirely prepared to reply to any requests for clarification they might wish to make.

10. Ms. SADIQ ALI, Country Rapporteur, said that, with the eighth periodic report of Qatar (CERD/C/207/Add.1), the Committee found itself at an impasse, since there seemed to have been no change in the Qatari Government's viewpoint. Although the fact that Qatar maintained its dialogue with the Committee was to be welcomed, it had to be noted that the eighth report reiterated the concept that the hadith (tradition) of the Prophet ruled out acts of discrimination. It was also stated in the report that the Shariah was the principal source of legislation. Apparently, the Qatari Government continued to think that the principles and provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and of the International Convention on the Suppression and Punishment of the Crime of Apartheid, which had been incorporated into domestic law, sufficed to prevent and punish any act of discrimination. It merely asserted that "any victim of an act of racial discrimination can apply to the civil courts for compensation or, alternatively, can apply to the Shariah courts ..." (para. 11) and that the "Amended ... Constitution and the provisions of the Islamic Shariah prohibit discrimination on grounds of sex, race or religion ...".

11. Qatar should appreciate, however, that, pursuant to article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties had to report on the legislative, judicial,

administrative or other measures which they had adopted to give effect to that instrument. Even if, as the Government asserted, racial discrimination did not currently exist in Qatar, a legislative text prohibiting racial discrimination would be useful, since it would have a deterrent effect.

12. She would also like to have details, preferably in tabular form, about the composition of Qatar's population, which, in 1986, had some 300,000 foreign workers out of 369,079 inhabitants. She would also like to know the situation of Palestinian refugees, many of whom had stayed in Qatar after the Gulf war. With regard to the protection of non-citizens, the report mentioned articles 1, 7 and 9 of the Provisional Constitution; it would be useful for the Committee to receive the text.

13. It was said in paragraph 15 that there were no integrationists multiracial organizations or movements in Qatar. In view of the diversity of the population, to which attention was drawn in the report, it seemed that such organizations would be useful in helping the various communities living in the country to get to know each other better, culturally and socially. She also felt it essential to prohibit, even if only as a deterrent, all propaganda which incited racial discrimination, as called for in article 4 of the Convention.

14. With regard to naturalization, she asked whether non-Arabs had the right to acquire Qatari citizenship. She also noted, in paragraphs 18 (j) and (k) of the report, that foreigners in Qatar were not guaranteed free choice of employment. During the Committee's consideration of Qatar's previous periodic report, the Rapporteur for that country had pointed out that Qatar did not apply ILO conventions and recommendations relating to trade unions. She noted the explanations given in that regard, in paragraph 18 (l) of the report, and hoped that, when the Qatari economy had become stabilized, workers' rights would be better protected. She would like figures to be provided on the subject of unemployment, whose existence was acknowledged in the report. She also wished to have a clearer explanation of the role of the special judicial body for labour affairs mentioned in paragraph 18 (l) of the report.

15. With regard to article 6 of the Convention, it was stated in paragraph 20 of the report that compensation awarded to a person who suffered material or moral damage as a result of an act of discrimination was normally assessed at the amount of material or moral damage suffered and the extent of any lost earnings, in accordance with articles 58, 67, 72 and 73 of the Civil and Commercial Code of Qatar, promulgated in Act No. 16 of 1971. It would be desirable to have the texts of those provisions communicated to the Committee.

16. She noted that paragraph 29 of the report said that, in the absence of legislation prohibiting acts of racial discrimination, the civil courts were not empowered to impose punishment for such acts, but could award compensation in respect of resulting damage. She thought it essential to adopt legislation prohibiting such acts and would like to know what procedure was currently followed for awarding compensation.

17. Lastly, she noted that the eighth report, while responding to some of the Committee's previous questions, failed to answer one which had been raised in connection with article 2 of the Convention: Mr. Wolfrum had noted that the provisions of the Convention were not sufficiently detailed for judges to be able to apply them direct and had stressed that legislative measures should be adopted in order to ensure the application of the Convention. She would like to know the Qatari Government's viewpoint on that matter. She was pleased that the Qatari Government acknowledged the shortcoming, since it was said, in paragraph 26 of the report, that Qatar envisaged "promulgating ... legislation in the light of model legislation which ... could be formulated by the Committee". Qatar could make use of the advisory services of the Centre for Human Rights for that purpose. In conclusion, she expressed the hope that changes in respect of the matters she had raised would be announced in the next report.

18. Mr. SONG Shuhua said that he endorsed the detailed observations Ms. Sadiq Ali had just made on the eighth periodic report of Qatar; he would therefore confine himself to a few questions. Firstly, he had noted in paragraph 10 of the report that, if an Islamic judge did not find a ruling in the Koran, the Sunna or previous judgements of Islamic courts, he might exercise his own juristic reasoning. There was a risk, therefore, that judges could differ in their reasoning; that was a further reason, in his view, which should prompt Qatar to adopt legislation against racial discrimination.

19. Paragraph 11 referred to the existence of two types of court to which any victim of an act of racial discrimination might apply: the civil courts and the Shariah courts. It would be useful to have an idea of the amounts that the civil courts could award as compensation. He also wondered whether a judgement had to be passed in order for compensation to be awarded. The report referred only to rulings of the Shariah courts, inter alia, in paragraph 30.

20. The report also said that all persons were equal in regard to their rights and obligations, without distinction as to race, sex or religion (para. 5). He asked whether foreign workers in Qatar were subject to discrimination and, in addition, what happened if a foreign worker of European origin committed an act of discrimination against a worker from the third world.

21. Paragraph 18 (g) of the report listed a number of rights which were said to be exercised by all persons on an equal footing within the limits of Islamic customs and traditions. He would like to know exactly what limits were meant and what the situation of women was in that regard.

22. Since Qatar had not seen fit to adopt legislation relating to racial discrimination, it was open to question whether it was in conformity with the Convention to leave it to judges, in the absence of relevant legislation, to assess the type of penalty to be imposed on those who committed acts of racial discrimination.

23. Mr. BANTON said that, like Ms. Sadiq Ali, he regretted the difference that had arisen between Qatar and the Committee relating to the interpretation of the Convention. The difference was very much less than it appeared, however. Indeed, in paragraph 26 of the report Qatar reaffirmed its willingness to consider promulgating internal legislation in the light of model legislation that the Committee could formulate. It therefore seemed to be but a question of timing. It should be mentioned, in that regard, that Qatar could seek help right away from the Centre for Human Rights with a view to drafting such legislation, without waiting for the model legislation mentioned.

24. Paragraphs 9 and 29 of the report, dealing respectively with the incorporation of the Convention into domestic law and the right of victims of racial discrimination to compensation, also allowed the aforementioned difference to be seen in a more relative light.

25. According to paragraph 12 of the report, Qatar had not found it necessary to promulgate legislation prohibiting acts unknown in Qatari society; he, too, reiterated that all States which had ratified the Convention thereby undertook to promulgate such legislation.

26. He also noted that, under article 9 of the Qatari Constitution, all persons were equal (para. 5 of the report); he would like to know whether "persons" meant Qatari nationals and foreigners alike.

27. He supported Ms. Sadiq Ali's request that the next report should provide more details about the population's demographic composition (para. 14 of the report). In paragraph 18 (k) (iii) (a) of the report, the Qatari Government quoted article 1, paragraph 2, of the Convention, according to which the provisions of the Convention did not apply to distinctions, exclusions, restrictions or preferences made by a State party to the Convention between citizens and non-citizens. It should be noted, in that regard, that the provision did not authorize the State or private bodies to introduce distinctions among various categories of non-citizens. It should also be emphasized that only in the light of the Convention could it be affirmed that a particular distinction was both non-racial and acceptable (para. 18 (k), last sentence).

28. It would be interesting to know whether the Qatari authorities, and the Amir in particular, were concerned not only with the racism which victimized the Palestinian and South African peoples, but also with events which were taking place in neighbouring countries and which strongly resembled acts of racial discrimination.

29. Having read in paragraph 3 that there was no superiority of Arab over non-Arab and in paragraph 4 that Islamic history contained numerous examples of non-Arab companions of the Prophet who had held high office in the Islamic State, he was astonished to read in paragraph 40 that the prevention of non-Arab lawyers from pleading before the courts of Qatar "obviously" did not constitute discrimination in favour of Arab lawyers. Even granted that few

non-Arab lawyers would be able, for linguistic reasons, to perform such a task, the possibility should not be ruled out. What did seem obvious was that such an exclusion was a discriminatory measure.

30. Mr. SHAHI said he thought that the report of Qatar had been drafted very frankly and that the Government of that country had clearly explained why it had failed to comply with certain obligations under the Convention. He also agreed that, as Mr. Banton had already pointed out, Qatar had declared its willingness to consider promulgating internal legislation, relating to racial discrimination, in the light of model legislation that the Committee could formulate.

31. No legislation had been promulgated concerning, on the one hand, compensation to which a victim of an act of racial discrimination was entitled and, on the other hand, the penalty to be imposed on the perpetrator of such an act. He would therefore like to know how a judge determined the amount of compensation and the nature of the punishment and whether there was a risk that penalties for similar offences could vary considerably according to the judge who heard the case. With regard to compensation, for instance, did judges refer to jurisprudence before taking a decision?

32. He shared Ms. Sadiq Ali's wish to know whether Palestinian refugees in Qatar had suffered as a result of the stance adopted by their leaders during the Gulf war.

33. Lastly, he agreed that the fact that non-Arab lawyers were not permitted to plead before the courts of Qatar constituted an act of discrimination.

34. Mr. de GOUTTES congratulated Qatar on having already submitted eight reports since 1976 and for having replied, in its latest report, to the questions raised by the Committee during its consideration of the previous report.

35. It was stated in the report that Qatar saw no point in promulgating legislation to prohibit acts of discrimination, since, on the one hand, those offences were unknown in Qatari society and, on the other, such acts were prohibited by the Constitution, the Convention - incorporated into domestic law - and the Shariah. He thought it as well to reiterate, once again, that no State could claim to be entirely free from racial discrimination and that, in ratifying the Convention, all States parties undertook to declare such acts punishable offences (art. 4 (a) of the Convention).

36. The Committee welcomed the fact, however, that Qatar had declared its willingness to consider promulgating internal legislation in the light of model legislation which could be formulated by the Committee (para. 26 of the report).

37. The Committee would also appreciate details about the respective jurisdiction of the civil and religious courts.

38. He noted that, according to paragraph 17 (e), the perpetrators of acts of racial discrimination might be liable to punishment ranging from an oral reprimand or a flogging to capital punishment; he recalled that, in the Committee's view, the campaign against discrimination could not justify a State's recourse to a penalty as severe as execution.

39. Mr. RECHETOV congratulated the Qatari Government on having replied in its eighth report to the questions put to it at the time its previous report was being considered. Other States parties should follow that example.

40. The Committee and Qatar differed on two essential points. First, although that country saw no need to promulgate legislation to prohibit acts unknown in Qatari society, the Committee took the view that any State party to the Convention was bound to declare such acts punishable, even if only as a deterrent. Secondly, contrary to what Qatar asserted, no country could claim to be entirely free from racial discrimination. Despite those differences, the valuable dialogue established between Qatar and the Committee should be continued.

41. The impression was given, in paragraph 18 (e) of the report, that only Qatari nationals had the right of complete freedom to leave the country and return to it. He would like to know what the exact situation was.

42. Mr. van BOVEN said that he, too, appreciated the fact that Qatar had replied in its report to the questions raised during the consideration of the previous report because such questions often remained unanswered.

43. Having read the report, he had the impression that Qatar had ratified the Convention not in order to enhance the campaign against racial discrimination in its own territory, since it asserted that no act of discrimination was ever committed there, but, rather, to add its efforts to those of the international community to combat racism in other parts of the world. As other experts had already pointed out, however, even if discrimination did not exist in Qatar, it should adopt legislation, if only as a deterrent, to prohibit acts of discrimination. Moreover, even if racism was completely unknown to Qatari society, racist acts might perhaps be committed by certain foreigners living in that country (para. 14 of the report).

44. Although Qatar applied article 6 of the Convention by making it possible for any victim of an act of racial discrimination to apply to the civil courts for compensation and to the Shariah courts for punishment of the guilty party and payment of compensation (para. 11 of the report), it was not thereby released from a considerable number of obligations under the Convention with regard to the prevention and combating of discrimination, on the pretext that the practice did not occur in Qatar. In that regard it should be strongly emphasized that, when it came to the exercise of fundamental rights, nationals and non-nationals must be on an equal footing. Persons in both categories thus had to be protected in an identical way against racial discrimination.

45. In paragraph 18 (k) (iii) (a), Qatar contended, on the basis of article 1, paragraph 2, of the Convention, that any State party to the Convention was entitled to make a distinction between citizens and

non-citizens in economic and other fields and that the freedom of the State in that respect was not subject to any restriction or condition. He did not fully agree with that assertion because basic international instruments, such as the human rights Covenants and the General Assembly's Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, determined very precisely the spheres in which the State could apply a distinction between citizens and non-citizens. The Committee should clarify its position with regard to article 1, paragraph 2, of the Convention.

46. Mr. LECHUGA HEVIA noted that the number of inhabitants indicated in paragraph 14 of the report included the members of foreign communities; he asked how many foreigners lived in Qatar and what percentage of the country's total population they represented. He also wished to know whether social benefits were available to foreign workers on the same footing as to Qatari citizens.

47. He thought it would be useful to have comparative data on morbidity and mortality rates, housing conditions, and access to education for workers or their children, as between Qataris and foreigners.

48. Lastly, he asked whether the situation of Palestinians living in Qatar, a country which had always upheld their cause against Israel's racist practices in the occupied territories, had changed since the Gulf war.

49. Mr. DIACONU said that the report of Qatar reflected sincerity as well as openness and a willingness for dialogue with the Committee. Some differences of approach were nevertheless discernible and appeared in the way in which the report was drafted and in the replies to the various questions put by members of the Committee. The latter should consider making recommendations to ensure that the Committee and the States parties had the same perception of the various aspects of the implementation of the Convention.

50. On the subject of legislation, a way would have to be found to convince States that, in matters of racism and racial discrimination, as in other spheres, the purpose of legislation was not solely to punish violations, but also to prevent them.

51. With regard to punishments, he noted that flogging, which had not been practised for a long time in most countries, was still practised in Qatar. He asked whether Qatar was a party to the Convention against Torture and, if not, whether it planned to become one.

52. He noted that Qatar had declared its willingness to consider promulgating legislation on racism and racial discrimination and he proposed that, with the Secretariat's assistance, the Committee should take the requisite measures to assist that country in drafting and adopting legislation for that purpose. In that connection, he asked what the respective spheres of competence of the civil and Islamic Shariah courts were. It was said in the report, which made a distinction between source of legislation and source of law, that the Shariah was the principal source of legislation (para. 1). Was it, however, also a direct source of law?

53. He asked whether religions other than Islam existed in Qatar and whether their followers were able to exercise the religious freedoms envisaged in the Convention.

54. Mr. YUTZIS said that most authors who dealt with the question of racism and racial discrimination recognized that the phenomenon was not exclusively political, social or economic in nature: it had an anthropological dimension, in that it reflected differences in outlook which might gradually become blurred, but could also become sharper. The members of the Committee might thus be dreaming of a Utopia in wanting to eliminate all barriers and all differences among human beings.

55. Life as generally envisaged in Islam was a journey towards perfection, the latter being perceived as an ideal, not a reality. Conditions therefore needed to be established which would prevent any imperfections from worsening. Koranic law was most rigorous on that score, in that it severely punished the perpetrators of offences such as theft or rape, which made it very difficult for human beings to live together. But it was hard to see why legislation should not be enacted to prevent potential crimes such as racism or racial discrimination, which were just as universal.

56. He agreed with Mr. Lechuga Hevia and other members of the Committee on the need to obtain data about foreign workers, of whom there seemed to be a very large number in Qatar. In that connection he noted that, according to the sixth periodic report of Qatar, "Qatar does not have a social insurance scheme to safeguard workers against the risks of death, disability or unemployment" and that the social security scheme covered by the Act of 1963 was "restricted to Qataris" (CERD/C/156/Add.2, para. 15 (j)). The eighth report of Qatar did not mention any resources to which foreign workers in Qatar might have access or any benefits available to them.

57. In conclusion, he drew Qatar's attention to the fact that it was part of an interdependent universal system, that the crises which occurred in various parts of the world transcended States, regions and individuals and that no country could peremptorily assert that racial discrimination was unknown to it.

58. Mr. GARVALOV said that he welcomed the high standard of Qatar's report, which reflected a willingness to cooperate in all frankness with the Committee. He was nevertheless of the opinion that the consideration of the report had revealed some basic differences of view between Qatar and the Committee and that refusing to recognize them did not further the cause of the Convention.

59. He would like to know whether Qataris and foreigners alike were aware of the fact that the Convention was an integral part of the country's domestic law and that it could be invoked before the courts. If so, he wondered whether they were aware of the provisions of the Convention, of the protection it provided and of the compensation they could obtain by invoking it.

60. It was stated in the report that, on the one hand, the Convention formed "part of the country's domestic law" (para. 28) and, on the other, that "the Islamic Shariah is the principal source of legislation in the State of Qatar" and "takes precedence [over] any conflicting provisions of positive law" (para. 32). According to the report, there was no conflict between those two systems, since, thanks to the Islamic Shariah which governed people's lives, racial discrimination was unknown in Qatar. He found such an argument hard to accept. The Convention contained provisions which were binding on the State of Qatar, but the latter had not yet decided to adopt the legislation necessary in order to conform to that instrument's requirements, in particular, the provisions of article 5 (d) (vii) and (viii) on the right to freedom of thought, conscience and religion and the right to freedom of opinion and expression, respectively, as well as those of article 5 (e) (ii) on the right to form and join trade unions.

61. The CHAIRMAN, speaking as a member of the Committee, thanked the Qatari delegation for the high standard of its report and the frankness of its account of the Convention's application in Qatar. He also thanked it for the written replies to the questions put by the Committee during consideration of Qatar's previous report.

62. There seemed to be two types of courts in Qatar, the civil courts and the Islamic Shariah courts, the latter alone having discretionary power to decide what punishment to impose in cases of racial discrimination. Was the Islamic judge's appraisal based on jurisprudence, the Koran or the Sunna and was there a risk that punishment pronounced in that way might be inadequate or, on the contrary, excessive in relation to the offence committed? It was also said in the report that the secular courts could hear requests for compensation. He asked in what order the two types of courts were available to complainants and whether the latter could apply to the secular courts and the Shariah courts at the same time.

63. On the subject of workers' rights, he wished to know whether Qatar intended to adopt legislation to eliminate differences in treatment between Qatari and foreign workers and whether there were plans to extend social protection to all workers, regardless of their racial or ethnic origin.

64. There also seemed to be differences with regard to the economic activity that foreign nationals in Qatar could exercise. Paragraph 18 (k) of the report thus stated that foreigners were "permitted to practise minor manual trades such as that of tailor, hairdresser, metalworker, tinsmith, upholsterer, repairman, carpenter and butcher" only if "they have a reputable Qatari sponsor". He asked whether it was intended to eliminate the difference between Qataris and foreigners with regard to access to trades.

65. Mr. AL-THANI (Qatar), replying to the questions asked by the members of the Committee, said that the majority of Palestinians resident in Qatar had been established there for 40 or 50 years and that many of them had even obtained Qatari citizenship. He pointed out that, during the Gulf war, Qatar had not expelled a single Palestinian and that Palestinians enjoyed all the freedoms guaranteed by the law.

66. The Qatari Government would transmit to the Centre for Human Rights the legislative texts which had been requested from it, as well as statistical data on persons resident in Qatar.

67. Any foreigner holding a valid residence permit could enter or leave the country at will. When he went home on leave, however, he must ensure that the permit would still be valid on the planned date of return. It should be noted that he could not be away for more than six months.

68. Qatar intended to amend some of its laws in order to bring them into line with up-to-date legislation. The text of those new laws would be attached to the next report if the legislation had been adopted by then.

69. The term "persons" in paragraph 5 of the report should be understood to mean all persons resident in Qatar.

70. The social insurance system in Qatar differed from the one that existed in Europe. It covered only handicapped persons, divorced women in need of assistance and people without accommodation. A monthly allowance was paid to all such persons.

71. Foreign workers signed a work contract with their employer; its term was from one to two years and, on its expiry, the employer paid them a termination grant whose amount was proportional to the length of the contract. Access to medical services was guaranteed to all on an absolutely equal footing. Medical attention was free for foreigners.

72. Qatar guaranteed the right to education for all. The Asian and European communities had begun to set up their own schools, which provided teaching in various languages, under the supervision of the Ministry of Education.

73. Religious freedom was guaranteed. All persons could practise the religion of their choice, but there were no Buddhist temples or churches in Qatar because believers conducted their religious services at home.

74. In conclusion, he said that his Government would answer the other questions in the next report.

75. The CHAIRMAN thanked the delegation of Qatar for the spirit of cooperation it had shown and invited it to withdraw.

76. Mr. van BOVEN said that he would like to know whether the Secretariat could prepare a file containing documents relating to the countries whose reports the Committee was to consider by the end of the session. The file might include, *inter alia*, documents prepared by the other Committees established under international human rights instruments, as well as reports by country rapporteurs.

77. The CHAIRMAN said that the Secretariat had taken note of Mr. van Boven's request and would reply to it that afternoon.

The meeting rose at 12.55 p.m.

CERD/C/SR.965/Add.1
3 June 1993

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 965th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 5 March 1993, at 4 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

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* The summary record of the first part (closed) of the meeting appears as document CERD/C/SR.965.

The meeting was called to order at 5.25 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)*

Draft general recommendation on non-citizens

1. Mr. BANTON introduced the draft general recommendation on non-citizens, which read:

> "ICERD article 1 (1) defines racial discrimination. Article 1 (2) excepts from this definition actions by a State party which differentiate between citizens and non-citizens. Article 1 (3) qualifies article 1 (2) by declaring that, among non-citizens, States parties may not discriminate against any particular nationality. Article 1 (4) excepts from the definition State action in accordance with article 2 (2).
>
> The Committee has noted that article 1 (2) has on occasion been interpreted as absolving States parties from any obligation to report on matters relating to legislation on foreigners. The Committee therefore affirms that the exception provided by article 1 (2) applies only to the action of a State party in differentiating between citizens and non-citizens. States parties remain under an obligation to prohibit and prevent racial discrimination by municipalities, employers, and private citizens, and others, whether the victims are citizens or non-citizens. They are responsible for seeing that their differentiation between citizens and non-citizens is not abused by other parties.
>
> States parties are recommended to note the extent of the exception provided in article 1 (2) when reviewing their policies and preparing their periodic reports."

2. The first paragraph was intended to clarify the following two paragraphs, but could be omitted. The second paragraph began by noting that article 1 (2) of the Convention had on occasion been interpreted as absolving States parties from any obligation to report on matters relating to legislation on foreigners. In general, some States parties had given an overly broad interpretation to article 1 (2); the purpose of the draft general recommendation was to advise States of the Committee's precise interpretation of that article. Mr. Wolfrum had suggested that reference might be made to articles 4 to 7 of the Convention in the third sentence of the second paragraph of the recommendation; he had found the last sentence of that paragraph unclear. Mr. Wolfrum had also had reservations about the third paragraph of the recommendation. In his own personal view, that paragraph was essential, as it set forth the Committee's recommendation on the manner in which States should interpret article 1 (2) when reviewing their policies and preparing their periodic reports.

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* Resumed from the 960th meeting.

3. Mr. van BOVEN said that he welcomed the draft general recommendation. It was high time for the Committee to take a clear stand on the issue, since article 1 (2) was clearly open to misinterpretation.

4. Protection against racial discrimination applied in principle to all individuals. While States might for other reasons make distinctions between citizens and non-citizens, such distinctions should never constitute an act of racial discrimination. The draft general recommendation seemed to imply that such action by a State party might be admissible in certain cases. The second sentence of the second paragraph stated that the exception provided by article 1 (2) of the Convention applied only to the action of a State party in differentiating between citizens and non-citizens; such wording might be misunderstood in the light of the third sentence, which stated that States parties remained under an obligation to prohibit and prevent racial discrimination by municipalities, employers, and private citizens, and others, whether the victims were citizens or non-citizens. Were States not obliged *a fortiori* to prohibit and prevent racial discrimination at the State level? The draft general recommendation needed to define the Committee's position more clearly.

5. Mr. SHAHI said that he fully endorsed the spirit of the draft general recommendation. However, like Mr. van Boven he was not entirely satisfied with the third sentence of the second paragraph. He wondered whether the State had the right to prohibit any distinction between citizens and non-citizens by employers and private citizens. In his view, the reference should be limited to municipalities and local authorities.

6. Mr. RECHETOV said that it might be appropriate to include a reference in the draft general recommendation to article 14 (1) of the Convention, which referred to individuals or groups of individuals within the jurisdiction of a State party and which consequently implied that no distinctions of any kind could be made in respect of the principle of non-discrimination. The expression "individual or groups of individuals" was found twice in article 14; referring to that article in the recommendation would thus reinforce the Committee's position that there could be no distinction between citizens and non-citizens as far as the principle of non-discrimination was concerned.

7. Mr. de GOUTTES thanked Mr. Banton for submitting a draft general recommendation on one of the most difficult issues raised by the Convention. The Committee had often been asked how it could justify the content of article 1 (2) and the draft recommendation was the first step in answering that question. As it stood, article 1 (2) referred explicitly to distinctions between citizens and non-citizens. Some legal scholars had suggested that article 1 (2) could not be interpreted as applying to fundamental freedoms, particularly security of person. However, it might prove very difficult to distinguish between rights from which no derogation was possible and which were consequently not subject to any distinction between citizens and non-citizens, and rights which were protected only in respect of citizens.

8. Article 1 (1) of the Convention defined racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin. Consequently, it might be appropriate to specify in the general recommendation that, aside from the distinction between citizens and non-citizens, any distinction based on race, colour, descent or ethnic origin remained subject to the general prohibition against racial discrimination.

9. Mr. DIACONU said that referring to article 14 in the draft general recommendation would not be useful; article 6 also contained wording similar to article 14, namely, that States parties must assure to everyone within their jurisdiction effective protection and remedies against any acts of racial discrimination. Such wording would not help to clarify the meaning of article 1 (2).

10. Article 1 (2) provided that the Convention did not apply to distinctions, exclusions, restrictions or preferences made by a State party between citizens and non-citizens. Such distinctions would clearly be incorporated into law. Consequently, States parties should be required to include information in their reports on any legislation relating to non-citizens. It was on the basis of such information that the Committee could decide whether racial discrimination existed.

11. Any reference in the draft general recommendation to article 1 (4) of the Convention should be omitted, as that paragraph had no relevance to the distinction between citizens and non-citizens. Moreover, the Committee should omit the reference in the second paragraph of the recommendation to the obligation of States parties to prohibit racial discrimination by municipalities, employers, and private citizens; the issue under consideration related to the State machinery and any other natural or legal person guilty of having committed an act of racial discrimination. The State remained under an obligation to prohibit and prevent acts of racial discrimination by any party.

12. The draft general recommendation should thus be limited to making it clear to States parties that the distinction between citizens and non-citizens must not be based on race, colour, descent, or national or ethnic origin.

13. Mr. GARVALOV proposed that the second sentence of the second paragraph of the draft recommendation should be amended to read: "The Committee therefore affirms its position that article 1 (2), while providing certain exceptions to States parties, shall be read by them in conjunction with article 6 and article 14 (1) and (2)".

14. Mr. van BOVEN said that a reference to articles 6 and 14 would be relevant only after the scope of the Convention had been clearly defined, and that was the purpose of article 1 (1) and (2). He preferred the solution proposed by Mr. Diaconu.

15. Mr. GARVALOV said that, in his view, article 1 (2) needed to be read in conjunction with articles 6 and 14 because the latter articles explicitly stated that States parties must assure to everyone within their jurisdiction

effective protection and remedies against any acts of racial discrimination; thus, those articles did not admit of any distinction between citizens and non-citizens.

16. Mr. SHAHI said that, in the second sentence of the second paragraph of the draft general recommendation, the words "on the basis of nationality" should be added after the words "between citizens and non-citizens". In the third sentence of that paragraph, the words "between citizens and non-citizens on the basis of race, colour, descent, or national or ethnic origin" should be added after the words "prevent racial discrimination". Those amendments would make the general recommendation more precise on legal grounds.

17. Mr. BANTON said that the solution proposed by Mr. Shahi gave rise to some problems. Article 1 (2) stated that the Convention "shall not apply to distinctions, exclusions, restrictions or preferences made by a State party to this Convention between citizens and non-citizens". In his view, article 1 (2) operated as an exception to the State party actions defined in article 1 (1). In that context, it was relevant to consider the action of States in conferring citizenship; they decided to confer citizenship on some applicants and not on others. Article 1 (2) made it quite clear that States could make such decisions without being in violation of the Convention. It would, therefore, not be helpful to include a reference to "nationality" in the draft general recommendation.

18. Mr. de GOUTTES said that the Committee might consider rewording the second sentence of the first paragraph of the recommendation to state that article 1 (2) applied only to actions by a State party which differentiated between citizens and non-citizens and could not be applied to any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin. The Committee would thus be making it clear that article 1 (2) must not be regarded as a derogation from article 1 (1) with regard to racial discrimination. In fact, article 1 (2) itself began by stating that the Convention, rather than article 1, did not apply to any distinction between citizens and non-citizens; thus, the purpose of article 1 (2) was to place that distinction outside the scope of the Convention.

The meeting rose at 6 p.m.

CERD/C/SR.966
26 July 1993

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 966th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 8 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.25 a.m.

PREPARATORY ACTIVITIES RELATING TO THE WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 8) (A/CONF.157/PC/54; General Assembly resolution 47/122; A/47/628)

1. The CHAIRMAN invited Mr. Shahi, who had represented the Committee at the third session of the Preparatory Committee for the World Conference, to speak.

2. Mr. SHAHI said that the third meeting of the Preparatory Committee had not been able to reach agreement on the agenda for the Conference. On the basis of the proposals by different regional groups, the Chairman of the meeting had submitted a "non-paper", but no consensus had been reached on it.

3. During that session of the Preparatory Committee, the representatives of the human rights treaty bodies had encountered difficulties when they had tried to take part in the discussion of the draft agenda, while other observers had been able to speak on the issue. On 17 September 1992, they had therefore sent Mr. Blanca, then Under-Secretary-General for Human Rights, a letter in which they had pointed out that they had been placed at a disadvantage and had been unable to make a full contribution to the preparatory process (A/47/628, para. 32). In the same letter, they had suggested that a special working group should be established to consider the issues relevant to the implementation of existing human rights standards and instruments and formulate concrete recommendations for improving the effectiveness of United Nations mechanisms aimed at promoting, encouraging and monitoring respect for human rights. The representatives of the treaty bodies had then brought the matter to the attention of the fourth meeting of their chairpersons, who had strongly supported the establishment of such a working group. The chairpersons had also recommended that the group of chairpersons should be constituted as a special advisory body to the World Conference (A/47/628, para. 77).

4. Since the report of the chairpersons of the treaty bodies on the work of their fourth meeting (A/47/628) had been adopted by the General Assembly, those recommendations consequently had the status of decisions of the United Nations.

5. The representatives of the treaty bodies at the third meeting of the Preparatory Committee had had the impression that the United Nations system did not have enough resources at its disposal to cope with the massive large-scale violations of human rights which were currently taking place. They had therefore agreed that the representative of the Committee against Torture and he himself, as representative of the Committee on the Elimination of Racial Discrimination, should address a letter to Mr. Blanca requesting the latter to give urgent consideration to the possibility of preventing human rights violations through the activities of the human rights treaty bodies. In that letter, dated 18 September 1992, Mr. Blanca had been asked to bring the matter to the attention of the chairpersons of the treaty bodies, who had been scheduled to meet the following month. It was gratifying to learn that the latter fully supported that proposal. For its part, the Committee had requested one of its members, Mr. de Gouttes, to prepare a report on the

possibility of preventive action within the context of the International Convention on the Elimination of All Forms of Racial Discrimination, on the basis of a "dynamic" interpretation of that instrument. In that connection, he recalled that the Secretary-General had earlier indicated that the treaty bodies should consider preventive action and had proposed that consideration should be given to the possibility of bringing massive violations of human rights to the attention of the Security Council.

6. In those circumstances, the Committee should take note of the fact that the General Assembly had agreed that the group of chairpersons should be set up as a special advisory body of the World Conference and that a special working group should be established to examine issues relevant to the implementation of existing human rights standards and instruments (A/47/628, paras. 77 and 78). The chairpersons of the treaty bodies had also been of the opinion that the regional preparatory meetings for the World Conference should involve representatives of the treaty bodies and should themselves consider establishing similar working groups (A/47/628, para. 79). They had recommended that consideration should be given to the holding of a meeting, within the framework of the World Conference, of the persons chairing the United Nations human rights treaty bodies and those chairing (or holding an equivalent position on) each of the principal regional and other human rights organizations (A/47/628, para. 80). They had also recommended (A/47/628, para. 81) that the General Assembly should request that an updated version of the independent expert's study on possible long-term approaches to enhancing the effective operation of existing and prospective treaty bodies (A/44/668) should be submitted to the World Conference on Human Rights. They had considered that the secretariat should include one or more members of the treaty bodies within the group of persons who would be reviewing the content of the "prototype" studies to be submitted to the World Conference (A/47/628, para. 82).

7. In the report to the General Assembly at its forty-seventh session on the work of the Organization, the Secretary-General, Mr. Boutros Boutros-Ghali, had proposed that consideration should be given to the possibility of enabling the Secretary-General and the human rights expert bodies to bring massive violations of human rights to the attention of the Security Council with appropriate recommendations (A/47/1, para. 101). As a follow-up to the preliminary discussions which it had held on the question at its preceding meeting, the Committee might consider the role the Security Council could play in the event of massive violations of human rights and the measures the treaty bodies could take to bring to the attention of the Council, presumably through the Secretary-General, situations which might require its intervention.

8. At a meeting held in January 1992, the Security Council had recognized that a close relationship existed between peace-keeping, international security and respect for human rights. As the Secretary-General had supported that statement, the treaty bodies now had to discuss the question and make the necessary recommendations.

9. Lastly, he said that he had become aware of an Amnesty International report describing the shortcomings of the entire United Nations human rights programme in dealing with violations of human rights. Amnesty International

had concluded that that situation was clearly the result of the lack of political will on the part of Member States of the United Nations and had recommended that a special commissioner for human rights should be appointed to coordinate all action under the United Nations human rights programme, that the United Nations should be given emergency response capability in the event of human rights crises and that those mechanisms should be strengthened by a reform of the practices and procedures of the different human rights treaty bodies.

10. The CHAIRMAN, speaking as a member of the Committee, said that he wished to supplement the information provided by Mr. Shahi by pointing out that, in its resolution 47/122, the General Assembly had approved the draft rules of procedure and the provisional agenda for the World Conference; it had also decided that the Preparatory Committee would hold its fourth session in Geneva in April 1993 and that it would take into consideration the preparatory work and conclusions of the regional meetings in Tunis, San José and Bangkok. The provisional rules of procedure for the World Conference on Human Rights were reproduced in the appendix to annex II of document A/CONF.157/PC/54. Rule 65 provided that "the chairpersons or other designated members of human rights bodies ... may participate as observers in the deliberations of the Conference ...".

11. Mr. LECHUGA HEVIA asked Mr. Shahi why there had been no consensus on the "non-paper" submitted by the chairperson of the third session of the Preparatory Committee and what the main points of controversy had been.

12. Mr. WOLFRUM asked why Mr. Shahi had not referred to the newly created ombudsman for minorities of the Conference on Security and Cooperation in Europe as one of the regional bodies which would participate in the Conference as observers.

13. Mr. FERRERO COSTA requested additional information on the special working group to examine issues relevant to the implementation of existing human rights standards and instruments.

14. Mr. van BOVEN asked what the Committee might expect from the special working group whose establishment was being considered and how it might, in cooperation with other treaty bodies, help improve United Nations human rights mechanisms, particularly with regard to prevention. The Committee had already expressed its concern about new forms of racism and extreme manifestations of nationalism and it might be appropriate for it to make its concern known to the World Conference, if only to make the Conference aware of its existence and responsibilities.

15. Moreover, some treaty bodies had shown an interest in the idea of merging their activities with a view to a more consolidated human rights system. The Committee might consider those questions in greater depth, as they might be raised during the World Conference.

16. Mr. YUTZIS said he agreed with Mr. van Boven that the Committee could make a useful contribution to the integration of the human rights treaty bodies; the Committee had a specific purpose and could therefore make an

important contribution to the World Conference on Human Rights. From that point of view, consideration might be given to the possibility of setting up a small working group at the current session to prepare guidelines for that contribution. He would like particular emphasis to be placed on preventive work and means of preventing situations from exploding.

17. Mr. ABOUL-NASR asked Mr. Shahi to provide information on the discussion which had taken place in the General Assembly on the agenda for the World Conference. It was known that there had been disagreement during that discussion. He also asked him to explain under what rule of the provisional rules of procedure of the Conference the Committee would be participating.

18. Mr. SHAHI, replying to Mr. Aboul-Nasr's questions, said that there had indeed been disagreement during the General Assembly's discussion of the agenda of the World Conference. In particular, there had been divergences of views between Asian, African and Western European States on issues such as the right to development, terrorism, etc. The General Assembly had nevertheless adopted an agenda, which was, however, not final; delegations would be free to request that new items should be included. The matter would be taken up again at the fourth session of the Preparatory Committee; he reminded members that the agenda adopted by the General Assembly was contained in the annex to resolution 47/122. In addition, the rule of the provisional rules of procedure of the Conference (A/CONF.157/PC/54, appendix) which permitted the Committee to participate was rule 65, entitled "Representatives of United Nations human rights and related bodies". The fourth meeting of chairpersons had made sure that those bodies had the right to be represented, but only by observers of course, as the World Conference was intergovernmental.

19. In reply to Mr. Wolfrum, he said that the Conference on Security and Cooperation in Europe had not been included among the regional organizations referred to in the report of the fourth meeting of chairpersons of human rights treaty bodies (A/47/628, para. 80), because the chairpersons had considered that that organization was a political entity, with a security purpose rather than an organization for the defence of human rights.

20. The role of the special group of experts proposed at the fourth meeting of chairpersons (A/47/628, para. 45) was to make it possible for the treaty bodies to consult with one another before the World Conference with a view to submitting joint views on the basis of consensus; that would certainly make the work of the World Conference easier. The idea behind that proposal was therefore to discuss jointly those issues which were of concern to the treaty bodies; those questions would include the non-universality of accession to human rights instruments, reservations, information strategies, etc.

21. Mr. Yutzis' suggestion that the Committee should itself establish a working group at the current session to prepare guidelines for its participation in the World Conference should certainly be borne in mind.

22. Mr. DIACONU recalled that the convening of the World Conference had at one point been in doubt because of differences of opinions between States about the relative importance to be attached to different categories of human

rights. In that connection, the Committee could play a conciliatory role by emphasizing non-discrimination in the exercise of all rights without distinguishing between civil, political, economic, social and cultural rights. But how could the Committee contribute to the World Conference? He recalled that it was a conference of Member States. In his view, it was not a good idea to set up a working group consisting of representatives of human rights treaty bodies to make recommendations to the World Conference. It would be better to consider the possibility of joint efforts by representatives of States and representatives of those bodies. A separate working group would have little chance of being heard. In a nutshell, the point was to work inside, not outside, the World Conference. The Committee could make recommendations to the World Conference through the Secretary-General or by requesting one of its members to represent it in order to express its views or again by combining those two approaches. The representative appointed by the Committee would take part in the work of the World Conference.

23. The Committee should first draw the attention of the Conference to the problems of racial discrimination by recommending that those problems should be considered under a particular agenda item. In fact, any one of the items of the current provisional agenda would be appropriate. Secondly, the Committee might request that the World Conference should invite all the human rights treaty bodies to review their methods and procedures and that the meetings of States parties should also consider those questions. Thirdly, the Committee could submit to the World Conference the recommendations currently being prepared by the working group on emergency action, of which Mr. de Gouttes was the coordinator.

24. Mr. ABOUL-NASR said he thought that the Committee should draw the attention of the World Conference to practical issues, bearing in mind public criticism of United Nations action in the field of human rights. In his view, the most important thing was not to create new posts, such as that of a high commissioner for human rights, or to draw up new instruments, but, rather, to concentrate on the way in which world public opinion perceived the role of the United Nations and, in particular, that of the Committee.

25. At present, the era of codification was giving way to an era of the implementation of instruments. All sorts of bodies were involved, even the Security Council, which had recently taken the initiative of establishing an international tribunal to try serious violations of human rights in a particular situation. In many countries of the third world, however, United Nations human rights activities were under serious criticism. United Nations bodies, including the General Assembly, the Security Council and the Commission on Human Rights, were being criticized for giving priority to particular situations while ignoring others. The same was true of regional organizations, such as the Organization of American States, which was concentrating all its attention on Peru and Haiti, while ignoring problems in other countries, and the Arab Committee for Human Rights, with which he himself was well acquainted.

26. The Committee itself, which was one of the most important bodies for what was called "preventive diplomacy", had not always shown good judgement in the past, for it had been among those which, out of ignorance or for

political reasons, had found the reports of the former Soviet Union and the former Yugoslavia to be satisfactory. It thus also had to be more practical and, to that end, had to take more account of the feelings of the laymen rather than concentrating its attention on purely legal questions.

27. Mr. YUTZIS said that the World Conference on Human Rights should consider the recommendation of the chairpersons of the human rights treaty bodies that the expertise of the members of those bodies should be drawn upon when a United Nations body or the Secretary-General established an ad hoc expert group that had a significant human rights objective (A/47/628, para. 45). In that connection, he recalled that, a few days earlier, the Commission had, without consulting the Committee adopted a resolution on contemporary forms of racism (resolution 1993/20), in which it proposed to appoint a special rapporteur on contemporary forms of racism.

28. The Committee should consider ways of making its voice heard on issues of primary concern to it. It should decide how it would take part in the discussion on item 9 (c) and (f) of the agenda of the World Conference, which related to the elimination of racial discrimination and the human rights and fundamental freedoms of vulnerable groups (A/CONF.157/PC/54, pp. 12-13).

29. The Committee should also try to reach consensus on the document on the prevention of massive violations of human rights and emergency situations and possibly add further elements to it.

30. The chairpersons of the human rights treaty bodies had considered that it might be appropriate for a representative of one of those bodies to be a member of the commission of experts appointed pursuant to Security Council resolution 780 (1992) to consider evidence of grave breaches of international humanitarian law in the former Yugoslavia (A/47/628, para. 45). In his view, the systematic use of that procedure would be very useful.

31. Mr. LECHUGA HEVIA recalled that the Committee had been established under an international instrument to which more than 130 States were parties. It was not therefore an autonomous entity and it would be going beyond its mandate if it expressed views during the World Conference which were not shared by a number of those States parties.

32. Mr. van BOVEN said that the working group set up by the Committee to consider the question of the prevention of massive violations of human rights and emergency human rights situations had decided to prepare a working paper which would include a number of proposals on the issue made by other bodies, as well as the Committee's recommendations on types of action to be taken. That paper, which would be amended in the light of the views expressed by members of the Committee, might constitute a very positive contribution to the work of the World Conference.

33. Mr. GARVALOV said that, if the Committee decided to submit such a document to the World Conference, it should stress a number of points.

34. First of all, it should specify the problems the Committee was encountering in persuading States to fulfil their obligations.

35. Secondly, it should indicate what the new forms of racial discrimination were, since some were so subtle that it was virtually impossible to know how to combat them.

36. Thirdly, it should emphasize that, in some cases, racial discrimination could degenerate into armed conflict affecting the local population and threatening the stability of neighbouring countries, as was the case in Bosnia and Herzegovina at present. It should point out that, once peace had been re-established, racial discrimination would not disappear and that people would continue to hate each other for some years to come.

37. Fourthly, the Committee should explain the practical means by which it intended to participate in what the Secretary-General had called preventive strategy diplomacy.

38. Mr. WOLFRUM said he fully agreed with Mr. Aboul-Nasr that existing instruments should be applied instead of drafting new ones. The Committee should, however, give serious consideration to the question of the establishment of an international criminal court as a means of ensuring greater respect for human rights.

39. Mr. van BOVEN had proposed that the different human rights bodies should be combined. As a first step, those bodies could perhaps strengthen their collaboration.

40. The Committee could participate actively in the preventive diplomacy recommended by the Secretary-General in his agenda for peace by informing the General Assembly, the Secretary-General and the Security Council as quickly as possible in cases where the risk of inter-ethnic conflict was building up in a particular region of the world. In that connection, it must be admitted that, two years eariler, in its report to the General Assembly, the Committee had not placed enough emphasis on the gravity of the inter-ethnic problems in Yugoslavia, particularly in Kosovo.

41. In his report entitled "An Agenda for Peace (A/47/277), the Secretary-General had stressed the need for ensuring follow-up once conflicts had ended. The Committee should consider how it could contribute to the relaxation of tensions and the prevention of new conflicts. In Iraq, for example, the conflict had not been resolved and the current situation was not conducive to peace and security in the region.

42. In conclusion, he said that the Committee had a very constructive role to play in the implementation of current standards, preventive diplomacy and follow-up operations.

43. Mr. YUTZIS asked what concrete action the Committee intended to take on the various proposals which had been made and which were not incompatible.

44. The CHAIRMAN suggested that a small open-ended working group should be given the task of organizing all those proposals and submitting a draft document to the Committee for consideration in plenary.

45. Mr. YUTZIS said that such a task might be entrusted to the working group on prevention, since most of the proposals related to the question of prevention.

46. Mr. FERRERO COSTA said that the working group should not forget the three themes proposed by Mr. Wolfrum, namely, the role which the Committee should play in the implementation of standards, in preventive diplomacy and in the follow-up of situations after conflicts.

47. The CHAIRMAN said that the working group would thus consider all the proposals on the World Conference that had been made so far.

48. Mr. YUTZIS recalled that the working group was open to all members of the Committee.

49. The CHAIRMAN asked when the document of the working group on the prevention of massive violations of human rights would be available.

50. Mr. YUTZIS said that, on the previous Friday, the working group had asked the secretariat to prepare an outline, but it had not yet been submitted.

51. Mr. GARVALOV proposed that the working group should first consider the draft document on the prevention of massive violations of human rights and then prepare a document on the proposals relating to the Committee's contribution to the work of the World Conference.

52. The CHAIRMAN said that he supported Mr. Garvalov's proposal. On Wednesday morning, the secretariat would make the draft document on the prevention of massive violations of human rights available to the members of the working group. The enlarged working group would then meet immediately in order to prepare a document on the contribution which the Committee could make to the work of the World Conference. The Committee could therefore be able to consider the two documents in plenary on Friday.

53. *It was so decided*.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)

Draft general recommendations on non-citizens (continued)

54. Mr. BANTON said that, following the discussion at the preceding meeting on the draft general recommendations on non-citizens which he had submitted to the Committee, he proposed that the following fourth paragraph should be added:

> "States parties are further recommended to note that the obligations assumed under articles 2 to 7 relate to all persons within their jurisdiction".

55. He hoped that that clarification of the draft recommendation would remove the doubts expressed by States parties about the interpretation of article 1, paragraph 2, of the Convention on the Elimination of All Forms of Racial Discrimination. States parties did establish "distinctions, exclusions, restrictions or preferences" which would normally be regarded as breaches of article 1, paragraph 1. Israel and Germany fell into that category. But the Committee could not criticize those States because they based themselves on article 1, paragraph 2, which removed the discriminatory character of distinctions, exclusions, etc. established by a State party as between citizens and non-citizens. Moreover, because of the inclusion in the Convention of the provision contained in article 1, paragraph 2, neither Israel nor Germany had considered it necessary to formulate a reservation when they had ratified the Convention. Likewise, a State party which allowed only its own nationals to be employed in the national postal service was not guilty of discrimination within the meaning of the Convention. However, if the Volkswagen company prohibited electricians of Turkish origin from being taken on to work in its plants, that private company could not shelter behind article 1, paragraph 2, of the Convention as a State could and it would be considered guilty of discrimination.

56. Mr. SHAHI pointed out that, in the example quoted by Mr. Banton, the Volkswagen company would be guilty of discrimination because it made a distinction between different nationalities. The same thing might not be true if, in line with article 1, paragraph 2, it limited itself to prohibiting the employment of "non citizens".

57. Having studied the text proposed by Mr. Banton, he could agree to the expanded protection proposed in the first three paragraphs. He was, however, not sure that the adoption of that text would do much to improve the situation. The fourth paragraph which Mr. Banton had just proposed was entirely unnecessary.

58. Mr. WOLFRUM said that he shared that opinion: the case referred to by means of the Volkswagen example was already covered by the Convention because it would involve discrimination between different nationalities. However, he also thought that the first two paragraphs of Mr. Banton's proposal should be retained, notwithstanding some lack of precision, because they were designed to broaden the necessary protection.

59. However, the obligation of protection could not be expanded as proposed in the fourth paragraph, to "all persons within the jurisdiction [of the State party concerned]", when, for example, the exercise of the political rights referred to in article 5 (c) of the Convention, "in particular the rights to participate in elections - to vote and to stand for election - ...", was prohibited to non-citizens. In a number of countries, such as Yemen, the practice of law was reserved to Yemeni citizens by birth. In Italy, property could be bought only by citizens of member States of the European Community. The last paragraph proposed by Mr. Banton could not remedy such an infringement of the Convention.

60. Mr. ABOUL-NASR said that the interpretation of the provisions of the Convention under consideration was even more difficult because in Arabic, there was only one term to designate "national" and "citizen", on the one hand, and "nationality" and "citizenship", on the other. He was not sure which of those concepts covered the other.

61. The examples that had been given of Volkswagen and the postal service tended to prove that certain occupations called for a differentiation between workers based on intimate knowledge of the work that might not be available to "non-citizens". Such distinctions were difficult to avoid. When the European Community authorized the citizens of any member country to settle in any other member country of the Community to look for work, was it acting in violation of the Convention or could it use as an argument the objective of the integration of the member countries provided for in the regional agreement linking the countries of the community? He feared that the adoption of a general recommendation on non-citizens would create more problems than it would solve. He also wondered specifically to whom such a recommendation could be addressed. Caution therefore seemed to be in order.

62. Mr. DIACONU said that it would be difficult to adopt the recommendation proposed by Mr. Banton unless a strict differentiation was made between "citizens" and "non-citizens", to the exclusion of every other distinction. The new paragraph proposed by Mr. Banton would negate to article 2 of the Convention because the words "all persons within their jurisdiction" would apply to foreigners. Moreover, there were international instruments, such as the International Covenant on Economic, Social and Cultural Rights, which provided, in article 2, paragraph 3, that developing countries could determine to what extent they would guarantee economic rights to non-nationals. Mr. Banton was right to want to combat abuses, particularly when there was discrimination between different categories of foreigners, but it had to be ensured that article 1, paragraph 2, of the Convention retained its full substance.

63. Mr. van BOVEN said that, despite the complexity of the problem, the Committee had to try to make the Convention clear because article 1, paragraph 1, was confusing and created the impression that States could limit the rights of non-citizens as they wished. The case of nationals of the member countries of the European Community, who enjoyed genuine privileges in all Community countries in the form of residence or work permits was the example which came to mind most often and which should be given further consideration, even if the distinctions made were not based on race. The Committee had to determine whether the Convention could limit rights which were recognized by international instruments such as the International Covenants on human rights.

64. The concept on which the fourth paragraph proposed by Mr. Banton was based was good and should be retained. Perhaps it would be enough to amend the wording along the following lines:

> "It is also recommended that States parties should note that the obligations ... do not allow derogation from the rights or freedoms already recognized in international instruments."

65. Mr. FERRERO COSTA said that he agreed with Mr. van Boven, who had just pointed out how the proposed fourth paragraph should be drafted. The third paragraph should also be made more specific, as it was too general and could be interpreted in a restrictive way. The first two paragraphs should be retained as they stood.

66. Mr. WOLFRUM said that, in the third paragraph, it should be indicated that, in the Committee's view, "States parties are under an obligation to report fully on the legislation on foreigners, as well as on its implementation".

67. The fourth paragraph proposed by Mr. Banton should be reworded as suggested by Mr. van Boven, as it would certainly be useful to take account of instruments which distinguished between the rights recognized to citizens and rights exercised as human rights.

The meeting rose at 1 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 967th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 8 March 1993, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 3.10 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)

Draft general recommendation on non-citizens (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the draft general recommendation submitted by Mr. Banton.

2. Mr. SHAHI said that the wording proposed by Mr. van Boven at the preceding meeting did not appear to take account of the fact that, under the International Covenant on Economic, Social and Cultural Rights, for example, States parties did discriminate between citizens and non-citizens in matters of employment, the right to work and other similar rights, and maintained that their level of economic development was such that they could not give the necessary parity to non-citizens. The rights of the citizens of many third world countries to work, housing, education and medical care were far from being realized and it would be many years before such countries were able to provide such amenities for their citizens, let alone for non-citizens. With regard to the fourth paragraph which Mr. Banton had proposed which read: "States parties are further recommended to note that obligations assumed under articles 2 to 7 relate to all persons within their jurisdiction", it might be appropriate to state that no less favourable treatment should be given to non-citizens than that provided for in the different international human rights instruments.

3. The CHAIRMAN said that, although the draft general recommendation proposed by Mr. Banton appeared to be non-controversial, it involved a number of legal and other complications which needed to be taken into account. Mr. Aboul-Nasr had already questioned the appropriateness of a recommendation which would draw the attention of States parties to the importance of implementing article 1 (2). In addition, the constitutions of many countries, particularly in Latin America, made a legal distinction between citizenship and nationality. All citizens were nationals, but not all nationals were citizens: a national was an individual born in the country or regarded as a national when born abroad, provided that certain criteria had been met. A citizen, on the other hand, was a person who, having reached a certain age, usually 18 or 21, could exercise the political right to elect or be elected to public office and to carry out other activities in accordance with the Constitution. The words "citizens" and "non-citizens" in article 1 (2) were intended to mean nationals and non-nationals resident in the country. The text of the draft general recommendation should therefore be as non-controversial as possible in order to help States parties interpret the articles of the Convention correctly.

4. Mr. BANTON proposed that the draft general recommendation should be amended in the following way: the first paragraph and the first sentence of the second paragraph would remain as originally drafted. The rest of the second paragraph and the third paragraph would be deleted and replaced by the following text:

> "The Committee therefore affirms that States parties are under an obligation to report fully upon the legislation on foreigners and its implementation. The Committee further affirms that article 1 (2) must not be interpreted to detract in any way from the rights and freedoms granted under other international instruments, especially the International Bill of Human Rights."

5. In reply to the question Mr. Aboul-Nasr had asked at the preceding meeting about why the Committee should adopt such a general recommendation, he drew attention to the compilation of general comments and general recommendations adopted by human rights treaty bodies (HRI/GEN/1). In future, the treaty bodies would probably all be expected to move forward in harmony with one another and in accordance with a common plan. If the Committee was to stay in line with the other treaty bodies, it would have to use the opportunity afforded by the adoption of general recommendations better to explain the implications of the obligations entailed by accession to the Convention. It was obvious to the Committee that the implications of obligations under article 1 (2) of the Convention were not fully understood.

6. It might also be useful for the Committee to consider the possibility that, in future, its general recommendations could be lined up with the different articles of the Convention. It already had a draft general recommendation before it on discrimination in fact in relation to article 1 and another relating to the definition of public life; a general recommendation had been prepared on the meaning to be given to the word "policy" in article 2 (1) and a report to be discussed later from a working party on all national human rights instruments might be linked to article 2 (1) (e). The Committee also had before it a draft recommendation that tied in with article 3, one on the training of law enforcement officials, which could be associated with article 5, one on effectiveness that fitted in with article 6 and one which had been circulated in 1992 drawing attention to the use of article 11 as an early warning mechanism. The Committee might therefore prepare a set of recommendations similar to the general comments adopted by the Human Rights Committee in order to explain what was implied in the Convention. It could also follow the practice of other Committees and update its general recommendations in the light of developments.

7. A second reason why the Committee should adopt a general recommendation such as the one now before it was that States parties were not clear about the point at issue. When the Committee had considered the periodic reports of Germany in 1989, the German authorities had not accepted the view now being stated in the draft general recommendation. When the Committee had considered the report of Austria in 1992, and pointed out that the first sentence of article 5 said that States parties undertook ... to guarantee the right of everyone ... to equality before the law, the Austrian representative had indicated that that was not the way in which he had read the Convention, and that he did not think that that was the spirit of the Convention or the way in which other States were reading it. Moreover, another State would shortly be acceding to the Convention which followed a similar legislative practice and was in line with the Austrian pattern, rather than with that of the Committee.

8. He could accept Mr. Aboul-Nasr's comment about citizenship arrangements within the European Community, and recalled that it had been raised in the past with reference to the Nordic States. His own reply was the same as he would give to States parties about the circumstances in which alleged discriminators might try to use a distinction between citizens and non-citizens in order to say that they were not discriminating on grounds of ethnic or racial origin. The Committee would have to look at each case in the light of its particular facts in order to see whether that argument was persuasive or not.

9. Mr. SONG Shuhua said that he welcomed the draft general recommendation because of the recent increase of racial discrimination, but the new fourth paragraph on the obligations of States under articles 2 to 7 of the Convention made it too broad in scope and could create loopholes. He therefore proposed that the fourth paragraph should be deleted.

10. Mr. ABOUL-NASR recalled that, following the Committee's consideration of the report of Germany, he had said that he had agreed with their interpretation of the Convention and he continued to have reservations about any broadening of its scope and, in particular, its applicability to every resident in every State in relation to all rights. Such a situation would create more problems than it would solve. One reason for recent difficulties in some countries was that the doors had been opened wide to large numbers of political immigrants who had created problems that had in turn resulted in human rights violations.

11. Mr. van BOVEN said that he did not regard the draft general recommendation as a full interpretation of the scope of article 1 (2). Rather, it was an interpretative formula which had the limited purpose of preserving the basic rights which were already recognized in other instruments as the rights of all persons, citizens and non-citizens alike. That did not expand the scope of article 1 (2) but prevented it from being used as a justification for undue limitations on the rights of non-citizens. Mr. Shahi's concern about the distinctions made between foreigners and citizens in some countries in respect of economic matters was dealt with in article 2, paragraph 3 of the International Covenant on Economic, Social and Cultural Rights, which was covered by the reference to the International Bill of Human Rights in the text of the draft recommendations before the Committee. He suggested that the word "granted" in the second sentence of the amendment proposed by Mr. Banton should be replaced by the words "recognized and enunciated", as used in other international instruments.

12. Mr. DIACONU said that the amendment proposed by Mr. van Boven was acceptable. However, he suggested that the fourth sentence of the first paragraph of the draft recommendation should be deleted. The reference it contained to article 2 (2) might send an inappropriate signal to States parties, since that article related to measures taken by States parties to safeguard certain population groups and ensure greater protection for them until they had achieved full equality. It had nothing to do with foreigners.

13. Mr. BANTON said that he could accept the amendment proposed by Mr. van Boven and Mr. Diaconu.

14. Mr. ABOUL-NASR asked whether the International Bill of Human Rights was recognized as including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

15. The CHAIRMAN said that the International Bill of Human Rights had, from the start, been considered to encompass all the instruments relating to the protection of human rights.

16. Mr. SHAHI said that, while the International Bill of Human Rights was generally interpreted to mean the Universal Declaration of Human Rights and the two Covenants, that was not an official designation. He proposed that, in the last sentence of the recommendation, the words "the International Bill of Human Rights" should be replaced by the words "the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights". He would have no objection to using "the International Bill of Human Rights" if that title was officially recognized as encompassing the other instruments.

17. Mr. van BOVEN said that the United Nations publication entitled "A Compilation of International Instruments" (ST/HR/1/Rev.3) listed the human rights instruments in question under the International Bill of Human Rights. However, the Committee might wish to refer to each instrument separately for pedagogical reasons.

18. Mr. WOLFRUM and Mr. RECHETOV said they agreed that it would be better to mention each instrument separately.

19. The CHAIRMAN suggested that the words "the International Bill of Human Rights" might be replaced by the words "the international human rights instruments".

20. Mr. van BOVEN said that he was in favour of referring specifically in the general recommendation to the Universal Declaration of Human Rights and the two Covenants, as that would make it clear that certain distinctions could be made on the basis of economic, social, cultural or political rights. The Optional Protocol to the International Covenant on Civil and Political Rights did not define substantive rights and should not be mentioned in the general recommendation.

21. Mr. ABOUL-NASR said that the wording of the draft recommendation implied that the Convention was based on the principles set forth in the two Covenants. Yet, those two instruments had been drafted after the Convention.

22. Mr. FERRERO COSTA said that Mr. Aboul-Nasr's concerns might be met by referring to the bodies responsible for monitoring those instruments. While the draft recommendation was acceptable as it stood, specific references to the Universal Declaration of Human Rights and the two Covenants would help avoid any misunderstanding.

23. Mr. BANTON said that the words "recognized and enunciated" used in the last sentence of the draft general recommendation implied that the rights and freedoms in question had long been recognized and had merely been given expression in various international instruments.

24. Mr. LAMPTEY said that he was not prepared to endorse the draft general recommendation as it stood. The Committee's aim was to ensure that all individuals, citizens and non-citizens alike, were protected against discrimination. However, it should proceed with caution in trying to extend the scope of the Convention; in particular, it should not attempt to modify any exceptions to article 1. If the purpose of the draft recommendation had been simply to elaborate on the principle embodied in article 1, then the entire text could be limited to the statement, contained in the fourth sentence of the second paragraph, to the effect that States were responsible for seeing that their differentiation between citizens and non-citizens was not abused by other parties.

25. A general recommendation was necessary only where the Committee considered that a State party had not clearly understood or met its obligations under the Convention. The Committee could make such an evaluation only during its consideration of the reports of States parties. He would appreciate knowing which reports had given rise to the need for the draft general recommendation under discussion.

26. Mr. BANTON said that the general recommendation was not meant to extend the scope of the Convention; its aim was to explain the implications of the obligations assumed by States parties.

27. The recommendation had been based on the Committee's response to the reports of Germany and Austria. In its concluding observations in August 1992, the Committee had had to draw Austria's attention to article 5, under which States parties undertook to guarantee the right of everyone to equality before the law, as Austria had interpreted that article differently from the Committee. Furthermore, in formulating general recommendations, the Committee was moving in the direction of the other treaty bodies.

28. He agreed with Mr. van Boven that the recommendation did not constitute a full interpretation of article 1 (2), which would call for a more elaborate statement.

29. Mr. LAMPTEY said that he would have to study the full text in writing before he could endorse it.

30. The CHAIRMAN said that a decision on the draft general recommendation on non-citizens would be postponed until the Secretariat could provide the Committee with the amended text.

Draft general recommendation on discrimination in fact

31. Mr. WOLFRUM introduced the draft general recommendation on discrimination in fact, which read:

> "The Committee on the Elimination of Racial Discrimination,
>
> "*Recalling* the definition of racial discrimination under article 1 of the Convention as 'any distinction, exclusion, restriction or preference which either has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life',
>
> "*Further recalling* the obligation of States parties under article 2, paragraph 1 (c), of the Convention to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination,
>
> "*Mindful* of the obligation of States parties under article 2, paragraph 1 (d), of the Convention to prohibit and bring to an end racial discrimination by any persons, group or organization,
>
> "*Noting* that some States have enacted legislation prohibiting acts which have a discriminatory purpose, and those acts which, by the imposition of unjustifiable conditions, have a discriminatory effect,
>
> "1. *Expresses its concern* that some statutes, regulations and policies, although they appear to apply equally to all groups with regard to race, colour, descent, or national or ethnic origin, fail to adequately take into account the particular characteristics of such groups with the result that some groups may be relatively less able to comply with the statute, regulation or policy in question than the rest of the population;
>
> "2. *Affirms* that any such statute, regulation or policy which has the effect of maintaining discrimination as defined under article 1, paragraph 1, of the Convention, constitutes discrimination in fact and is not in compliance with the Convention;
>
> "3. *Invites* States parties to review their statutes, regulations and policies regarding the elimination of racial discrimination with a view to complying fully with the requirements of the Convention in the foregoing regard."

32. The recommendation had been drafted in response to a number of reports of States parties. For example, in submitting Portugal's periodic report, the Portuguese representative had referred to a situation considered by its own Constitutional Court as de facto discrimination against a certain population group. States parties frequently limited themselves to noting that equal treatment before the law and prohibition of discrimination were provided for

in their constitutions and then contended that such constitutional provisions were sufficient to meet their obligations under the Convention. The recommendation under consideration had been drafted in order to highlight the need for States parties to assess their laws and regulations for any possible de facto discriminatory effects and to bring such laws and regulations into line with the Convention. The recommendation highlighted the fact that the Convention had been drafted not only to prohibit discrimination under the law, but also to guard against discrimination arising as a result of law.

33. Mr. ABOUL-NASR said that, in his view, the Committee was producing too many general recommendations. It would be preferable to draw the attention of a State party to any difficulties directly after the consideration of its report.

34. If the Committee felt that it was necessary to draft general recommendations, then they should be consolidated into one document in order to make it easier for States to prepare their reports.

35. Mr. WOLFRUM said he agreed that the general recommendations should be combined in a single document to be made available to States parties. General recommendations were, in his view, the best way of helping States to meet their reporting obligations in full. Furthermore, compared to the Human Rights Committee, the Committee on the Elimination of All Forms of Racial Discrimination was producing a relatively small number of general recommendations.

36. Mr. BANTON said that, at an earlier meeting, the Committee had decided that, when making its concluding observations, it would refer to general recommendations as needed rather than going into lengthy detail about a particular point. Having a set of general recommendations would thus facilitate the Committee's work.

37. Mr. FERRERO COSTA said that the Committee should adopt all the general recommendations it needed, however many or few. If members had ideas for other general recommendations, they should put them forward for discussion. General recommendations drew the attention of States parties to important aspects of the Convention and helped them interpret the rules they should follow. However, the recommendations could certainly be expressed more clearly than they were at present. Many of the other treaty bodies had drawn up recommendations; that was a natural and logical step in the process of interpreting a legal instrument. The Committee should take advantage of the other treaty bodies' experience.

38. Mr. LAMPTEY said that he was concerned about the statement in paragraph 1 of the draft recommendations that statutes, regulations or policies adopted by States might fail to take into account the characteristics of certain population groups, with the result that those groups would be "relatively less able" to comply with them. To define such a situation as discrimination was a very controversial step. Surely the real aim of the Convention was to cover cases of deliberate discrimination against certain groups, not to condemn a

State for discrimination which it had not intended or even foreseen. As it stood, paragraph 1 seemed to claim that the Committee was more capable of judging whether a law was discriminatory than the State which had adopted it. States parties would not accept that.

39. Mr. SONG Shuhua said that there seemed to be two questions at issue; discrimination in fact and lack of equality in fact. For instance, the draft recommendation might be understood to mean that a State was guilty of discrimination if a certain minority group lived in tents, while other population groups lived in palaces, and that was quite absurd. It was also very difficult to use the same criteria for both developed and developing countries; developing countries might be judged guilty of "discrimination" against certain population groups in respect of sanitary conditions or perhaps the electoral system, when the real problem was the country's overall lack of development. Allowances must be made for States in difficult circumstances.

40. Mr. DIACONU said that it was difficult to draw up a general recommendation governing discrimination in fact, which would take different forms in different countries. Moreover, although discrimination in fact was, by definition, a phenomenon outside the law, paragraphs 1, 2 and 3 of the draft recommendation all referred to the laws of the State concerned. The Committee should concentrate on the effects which those laws had in practice.

41. A general recommendation applied to all States parties: as it stood, the draft recommendation before the Committee seemed to imply that all States parties, without exception, were already violating the Convention. It also seemed to duplicate the provisions of article 2 (1) (c) of the Convention, which called upon States parties to change legislation which had the effect of creating or perpetuating racial discrimination.

42. Paragraph 1 of the draft recommendation raised a very complicated issue, as Mr. Lamptey had pointed out. If States took the recommendation fully to heart, they would adopt legislation only if they were sure that every single member of the population would be able to comply with it. For example, most States had only one official language, which naturally made it more difficult for members of minority groups with a different mother tongue to cope with administrative or legal procedures. However, should that be counted as discrimination on the part of the State? To give another example, a university entrance examination in the State's official language would presumably be more difficult for a member of a minority group, but it was surely not reasonable to expect the university to set a simpler entrance examination for such a candidate. In his own country, Romania, that particular problem had been solved by allowing members of the Gypsy minority to sit university entrance examinations in their own language.

43. The wording of paragraph 3 was too direct and the provision might be understood as an order to States parties to change their legislation; perhaps it could be reworded as a request to States parties to take the Committee's concerns into account when they chose to review their legislation. The real aim of the Convention was to encourage States to eliminate racial discrimination, whether in law or in fact, and the Committee must try to define that discrimination as clearly as possible.

44. Mr. ABOUL-NASR said that all the Committee's general recommendations should take the same form, whether that of a resolution with introductory notes, or some other form. Many of the general recommendations were very difficult to understand without knowledge of the particular case in which the issue concerned had arisen. For instance, the draft recommendation under consideration had been prepared because of a case involving Portugal: without knowing the details of that case, paragraph 1 was very difficult to understand. Paragraphs 2 and 3 merely paraphrased the Convention itself, without making its provisions clearer. General recommendations should make the Convention easier to understand, without the need to refer to a particular case.

45. Mr. van BOVEN said that the General Assembly had welcomed the Committee's practice of adopting general recommendations. The Committee had not adopted many recommendations compared with other treaty bodies such as the Committee on the Elimination of Discrimination against Women. Some treaty bodies adopted their general recommendations in what might be called a "narrative" form, whereas others, including the Committee, adopted a formal resolution. It was true that a resolution might be more difficult for persons outside the United Nations system to understand. A general recommendation was usually drawn up because a situation in a particular country had come to the Committee's notice, but it was important not to mention countries by name, since that might be taken as unfair criticism. He did not doubt the need for a general recommendation on the subject of discrimination in fact, but he thought that the Committee's views could be more clearly and subtly explained using the narrative form, rather than the form of a resolution, as Mr. Banton's draft recommendation on non-citizens had shown.

46. Mr. ABOUL-NASR said that he did not intend States to be mentioned by name in the general recommendation. He had merely called for a general recommendation to be adopted immediately after the consideration of the State party report in which that issue had arisen.

47. Mr. SONG Shuhua said that general recommendations should raise issues which were important for the Committee's work as a whole. They should be truly general in nature: in other words, they should cover issues which had arisen in more than one State. There was no need to name the States concerned, since they ought to recognize a situation which applied to them. It was important that the existing general recommendations, and those produced in the future, should take the same form.

48. Mr. ABOUL-NASR said that the term "general recommendation" meant that the issue concerned was one which might arise in any State. It did not mean that the issue must have arisen in more than one State before the recommendation was prepared.

49. Mr. BANTON said he agreed with Mr. van Boven that a general recommendation in narrative form, not in the form of a resolution, would enable the Committee to explain its reasoning and put its point across more subtly.

50. Mr. SHAHI said he was grateful to Mr. Wolfrum for drawing the subject of discrimination in fact to the Committee's attention. Mr. Aboul-Nasr had rightly pointed out that, because of the way the Committee's work was organized, it was not always possible, owing to lack of time, to formulate a general recommendation immediately following the consideration of a particular report. However, there was no reason why such a recommendation could not be adopted at a later stage.

51. He noted from Mr. Wolfrum's introduction that the Human Rights Committee had adopted a general comment 18 (37), paragraph 9 of which stated that the Committee wished to be informed about legal provisions and administrative measures directed at diminishing or eliminating discrimination in fact. That showed that the Human Rights Committee had overtaken the Committee on the Elimination of Racial Discrimination in highlighting the existence of that form of discrimination. The Committee must not lag behind and say nothing on the matter: it ought to adopt a position, although perhaps in the form of a statement rather than a recommendation.

52. Mr. RECHETOV pointed out that the form in which the Committee's view was presented was of secondary importance: what mattered was how that view was perceived by the State concerned. He did not think the approach suggested by Mr. Aboul-Nasr, whereby the Committee should adopt recommendations in relation to specific country reports, as was the practice in international judicial bodies, would be acceptable. The Committee was concerned not with companies or legal persons, but with States. A recommendation based on the report of a particular State would inevitably lead that State to question why it had been singled out for condemnation. Any recommendation made should reflect the situation in a number of reporting States if it were not to prove ineffective.

53. On the point raised by Mr. Diaconu, he recalled that there had been extensive debate in the Human Rights Committee about the reference to minorities in article 27 of the International Covenant on Civil and Political Rights. In the end, the words "persons belonging to such minorities" had been adopted in preference to the word "minorities", on the grounds that the protection of the rights of groups rather than of persons would call for very extensive and complex legislation.

54. He agreed that Mr. Wolfrum had drawn attention to an important point, namely, that the principle of non-discrimination could turn out in practice to be discriminatory against certain groups. He favoured the adoption of the draft general recommendation, perhaps with some drafting improvements.

55. The CHAIRMAN said that paragraph 1 of the draft recommendation implied that certain States might have statutes, regulations and policies which did not take account of the needs of certain groups. Did it follow that the States concerned, assuming that they accepted that those statutes, regulations and policies led to discrimination in fact, would have to consider making special provision for such groups? He feared that the way paragraph 1 was drafted might lead such States to claim that, on the contrary, their existing statutes and policies were fully in accordance with the Convention. Few would be likely to admit that they led to discrimination in fact.

56. He urged that the Committee should make it clear that it had found it necessary to adopt a general recommendation in the light of certain specific cases.

57. Mr. WOLFRUM said that the recommendation's main defect was the form in which it was drafted. He had adopted the format used by the Committee until now, but had found it very difficult to cover such a complex subject within the limited framework of a recommendation. He would be quite willing to redraft the text in a more narrative style.

58. In reply to the more substantive points raised, he agreed that it was the Committee's mandate to deal with direct forms of discrimination, whether found in legislation or in practice. However, it was also part of its mandate to deal with the other form of discrimination he had identified. He drew attention to article 2 (1) (c) of the Convention, which required States to review any policies, and to amend any laws, which led to discrimination. On that point, he disagreed with Mr. Diaconu: the Committee was entitled to look into not only new laws, but also old laws, which had the effect of perpetuating discrimination. It would be narrowing the Committee's mandate unduly to have it concern itself only with future legislation and practice.

59. In reply to Mr. Lamptey, he said he agreed that the wording of paragraph 1 of the recommendation left something to be desired. He had had two examples in mind when drafting it: the first was a United Kingdom law making the wearing of safety helmets compulsory for certain occupations. A court ruling had found that law invalid on the grounds that it was in effect discriminatory by excluding a certain sector of the population, namely Sikhs, who could not wear helmets for religious reasons, from certain occupations. A second example was a law adopted in a certain European State whereby only persons who had entered the country before a certain date were entitled to vote. That law effectively excluded a certain ethnic group which made up as much as one third of the entire population.

60. He would follow the suggestion that, when problems arose in future, the Committee should approach the States concerned more openly than it had in the past. However, that did not mean that it should give up the practice of making general recommendations, which served to remind States of their obligations. Thus, the Committee had always rejected claims by States parties that they had no need to implement article 4 of the Convention because no racial discrimination existed in their territory, and had adopted recommendations to that effect.

61. Although the Human Rights Committee's general comment 18 (37) was not in fact a very good one, it did highlight the point that discrimination in fact was a problem that needed to be dealt with. He agreed that the Committee, as the lead body on the matter, did not have a very good record in that regard.

62. Mr. LAMPTEY said he was grateful to Mr. Wolfrum for his explanations, but still had a number of concerns about the general recommendation. The Sikhs' particular problem with regard to the wearing of safety helmets was one that could be regulated within the State concerned. The Committee should be very careful when drafting recommendations intended to cover all possible

situations in all States parties. The problem of minority groups which might have difficulty in complying with certain statutes, regulations or policies was a highly complex one and it would be very difficult to define international standards to cover it. The Committee might find it necessary to restate that legislation enacted by some States had a discriminatory effect, but he did not think it should go on to affirm that those States were guilty of violating the Convention.

63. While it was true that, under article 9 of the Convention, the Committee was entitled to make recommendations following consideration of a single report, he believed that it should only do so after identifying a trend that was common to a number of reports.

64. Mr. DIACONU said he did not see how the Committee could properly embark on a campaign calling on all States to revise all their existing legislation. The legislation concerned should be judged on its merits. The recommendation should call only for the revision of those statutes, regulations and policies that had been shown to lead to discrimination in fact.

65. The CHAIRMAN said that Mr. Wolfrum had no doubt noted all the comments made and would prepare a new draft general recommendation on that basis.

66. He had received a communication from the Permanent Mission of El Salvador to the effect that its report would be submitted in the near future. The Committee had also received a report from Viet Nam, which had still to be translated. It would therefore consider both those reports at its next session in August 1993.

The meeting rose at 6 p.m.

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20 July 1993

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 968th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)*

Eighth periodic report of the Sudan (CERD/C/222/Add.1)

1. At the invitation of the Chairman, Mr. Isaac C. Kenti (Sudan) took a place at the Committee table.

2. Mr. KENTI (Sudan) said the Government of the Sudan was fully prepared to cooperate with the Committee in order to ensure the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, as it had shown by sending a special representative to continue the dialogue with the Committee. The present regime attached great importance to the Committee's work, the ultimate objective of which was the welfare of the Sudanese population. In contrast, the previous regime had failed in its commitments to the Committee by not submitting the periodic reports required under the International Covenants on Human Rights. The present Government was eager to cooperate with the human rights bodies and had prepared a series of reports as quickly as possible to fill the gaps left by its predecessors.

3. Ms. SADIQ ALI expressed appreciation for the Government's willingness to hold a dialogue with the Committee despite the unsettled conditions in the Sudan. She was gratified that the eighth periodic report had been prepared in accordance with the guidelines but regretted that the material provided did not correspond to the requirements of each article of the Convention. For example, although it was stated that the Sudan was a multiracial and multicultural society, no breakdown of the population was given as stipulated in general recommendation IV, and the most important subgroups of the southern Nile had not been mentioned. It would be appreciated if the demographic composition were provided in the next report in tabular form. Similarly, while well over 100 languages were spoken in the Sudan, Arabic was the official language, and a committee had been set up in the 1980s with a view to wiping out certain tribal languages and creating a monocultural Islamic society, which contravened article 5 (e) (vi) of the Convention (right to equal participation in cultural activities). She asked how many languages were recognized in the Sudan in addition to Arabic, and whether English was the principal language for the Southern Sudan.

4. The last report had been submitted shortly after the establishment of a civilian Government had raised high hopes. Since then the situation had changed drastically and no longer conformed to the Convention with regard to constitutional, judicial, legal and administrative aspects. The General Assembly, in resolution 47/142, had called upon the Sudan to comply

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* Resumed from the 964th meeting.

with the International Convention on the Elimination of All Forms of Racial Discrimination and to ensure that all individuals [...] including members of all religious and ethnic groups, enjoyed the rights recognized in the Convention. However, General Bashir had dismissed the resolution and announced, according to Amnesty International, that the Sudan would turn a deaf ear to any condemnation in any forum and that the accusations of human rights violations were baseless rumours based on unfounded facts. The need for decisive action in the Sudan had never been greater.

5. The Code of Criminal Procedure and the Penal Code, based on the Shariah (para. 12 of the report), provided for corporal punishment called hudūd, which ranged from flogging to amputation and summary execution. There continued to be reports of torture in secret detention centres. The new amendments, mentioned in paragraph 17 of the report, were a welcome development, but everything depended on how the provisions were applied in practice.

6. There were various reports from international NGOs, the media and United Nations bodies of ill-treatment of the population by the security forces: arbitrary detentions, extrajudicial executions, disappearances and forced detentions, and of "ethnic cleansing" campaigns in Southern Sudan.

7. She would like to know how the Penal Code was applied in practice in cases of racial discrimination. Did it contain penalties for acts of racial discrimination? Could a victim of an act of racial discrimination bring legal proceedings if such an act was not defined as an offence? Since the Convention had been incorporated into Sudanese law, could it be invoked in court? Beginning in 1989, judges not considered sympathetic to the regime had been replaced; that cast doubts on the independence of the judiciary. The Court of Public Order in the Khartoum market-place seemed to be meting out summary justice. Moreover, the special courts for the trial of accused persons appeared to conflict with article 5 (a) of the Convention, which provided for the right to a fair and public hearing before an independent and impartial tribunal.

8. Since the suspension of the 1989 transitional constitution, the National Salvation Revolution Command Council had been ruling by decree, assigning exceptional powers to the President. Since the first Decree had abolished existing legislative and political organs, she would like to know how the Sudan could implement the requirements of the Convention without enacting special legislation. Criticizing the Government was considered a form of political opposition and many people were languishing in jails for that supposed crime.

9. Concerning the effective implementation of the right to participate in politics, she would like details of the National Dialogue Conference on the Political System, held in October and November 1989. She would also like to know whether the Secretary-General had been notified of the declaration of emergency contained in Decree No. 3, as provided for in article 4 of the International Covenant on Civil and Political Rights.

10. How did the Government intend to allow groups to coexist within the federal system established in Decree No. 4, in response to the demands of the South? The Addis Ababa Agreement of 1972, which declared all Sudanese to be equal, was to ensure the autonomy of the South in managing its own affairs and make it possible to share equitably the country's scarce resources, on the premise that political and economic equality and religious tolerance would help contain the centrifugal tendencies created by ethnic and racial cleavage in the Sudan. But the attempts to Islamize the country by introducing the Shariah was perhaps the most obvious attempt at repealing the agreement. Clarification on the type of federation contemplated would therefore be welcome.

11. How could Decree No. 5 say that almost all shades of political opinion were represented in the Assembly, when political parties were banned and the legislature had been dismantled, in contradiction with article 5 (c) on political rights?

12. The Sudanese Government had not provided the information requested concerning article 2 of the Convention. In particular, it had not indicated the measures it had taken, in implementation of subparagraph (c), to review governmental, national and local policies and laws perpetuating racial discrimination. How could the report speak of an acceleration of the process of national integration (para. 29) while the war was still going on?

13. Despite the fact that articles 2.2 and 1.4 laid down conditions for affirmative action, the ILO had observed that the southern provinces lagged far behind the rest of the country and that their per capita income was half the national average. It was surprising that the report did not mention the number of homeless children in the South.

14. According to paragraph 31 of the report, mixed marriages were encouraged. In the Nuba mountains, however, tens of thousands of people were being moved each month; men and women were separated and the women were presumably being used for mixed marriages to enhance the Arab population or sold into slavery in the North. A similar situation had arisen in the 1920s, forcing the British authorities at the time to act.

15. The report did not indicate what preventive action had been taken in regard to acts of racial discrimination in conformity with article 4, paragraphs (a) and (b), which were mandatory and formed the backbone of the Convention. The relevant texts of the Penal Code would be welcome.

16. Article 5 (b) provided for the right to security of the person and to State protection, yet Amnesty International and Africa Watch reported mass killings and extrajudicial executions of civilians in the remote Nuba mountains, where the population was primarily Christian and where the Government was engaged in a programme of military action that appeared to amount to "ethnic cleansing". There were also numerous reports of cases of human rights violations by the Sudanese People's Liberation Army, chiefly against the civilian population (forced conscription of children, arbitrary detention, torture, population displacements, etc.). Hundreds of people had been reported extrajudicially executed in Juba by government forces. She

stressed the importance of the right to life and noted that the offences to which the death penalty applied were not clearly defined in Sudanese legislation. She would like the Sudanese delegation to provide further information in that regard. She also hoped the Government would investigate the reports of human rights violations in the Sudan and bring those responsible to justice. In resolution 47/142, the General Assembly had called upon the Government of the Sudan to ensure a full, thorough and prompt investigation of the killings of Sudanese nationals employees of foreign Government relief organizations by the independent judicial inquiry commission that the Council intended to constitute, to bring to justice those responsible for the killings and to provide just compensation to the families of the victims.

17. She also wished to draw attention to the serious problem of famine in southern Sudan. The Sudanese Government tended to minimize the extent of the famine and had sought to maintain sole responsibility for the transport and distribution of emergency aid. The problem was aggravated by looting by the army and by the fact that the population of certain southern villages had been decimated by the war.

18. Despite the fact that article 5 (d) (i) provided for the right to freedom of movement and residence within the border of the State, tens of thousands of people had been forcibly relocated from the Nuba mountains in southern Kordofan, while local militia practised a scorched earth policy. In Khartoum, hundreds of thousands of people displaced by war and hunger had been sent in recent months to two "peace camps" in the desert. A United Nations mission led by the Under-Secretary-General for Humanitarian Affairs had witnessed bulldozing of squatters' homes but had failed to visit the Nuba mountains in September 1992. A vast programme of Serbian-style "ethnic cleansing" had been launched against the Nuba and Fur people in regions that the popular defence forces wished to take over. Hundreds of Nuba and Fur villages had been razed and their inhabitants driven from their land. Thus the Sudanese Government was totally ignoring article 5 (d) (i) of the Convention, just as it also appeared to be ignoring article 3 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.

19. Concerning article 5 (d) (iv), it was clear that women had little right in the choice of a spouse, especially those who were the victims of slavery, which was reportedly still current.

20. The right to own property, set forth in article 5 (d) (v), had been nullified by the mass relocations of people in the South and the destruction of dwellings.

21. The right to freedom of thought, conscience and religion, laid down in article 5 (d) (vii), was also being flouted. Nuba magistrates, policemen and administrators had been replaced, mostly by Muslim Arabs. The offence of apostasy carried the death penalty.

22. The right to freedom of peaceful assembly and association had been banned since the declaration of the emergency.

23. Economic, social and cultural rights were no better respected than civil rights. The right to work (art. 5 (e) (i)) was not possible in the war-ravaged territories. In addition, trade unions and political parties were banned and their leaders imprisoned.

24. Regarding the right to housing (art. (e) (iii)), the war-related destruction jeopardized any housing programme worth the name. It would, however, be interesting to know what the Sudanese Government was doing to rehabilitate the homeless, especially homeless children.

25. Concerning the right of all, without distinction, to public health, medical care and social services (art. 5 (e) (iv)), a United Nations team had reported a high rate of severe malnutrition among the children of Juba.

26. Turning to the right to education (art. 5 (e) (v)), she would like to know the minimum and maximum ages for compulsory education, whether the educational system was the same in the North and the South, whether children in school could be taught in local languages and what problems were created for children due to forced migration from the South to the North.

27. Following the ILO comments on the implementation of the Forced Labour Convention by the Sudan and taking into account the allegations of slavery from the United Nations Working Group on Contemporary Forms of Slavery, she asked the Sudanese delegation to provide information on any investigation or action being undertaken by the Government in that regard. She would also like to know the scale of illicit transfers of children.

28. Finally, with regard to article 7 of the Convention, she said that the replies provided in the report were not in conformity with the provisions of the Convention and asked the Sudanese Government to provide a proper reply in its next report.

29. Mr. WOLFRUM expressed the hope that, despite the economic and political problems facing the Sudan due to the civil war, the Government would make every effort to implement the Convention fully.

30. To his knowledge, the Sudanese National Assembly had established a committee to prepare a study on the human rights situation in the Sudan. Had the committee completed its work? If so, its findings would be very useful to the Committee on the Elimination of Racial Discrimination.

31. He believed that the report did not say enough about the judicial system and, like Ms. Sadiq Ali, would like further information. The Government might perhaps explain the repercussions of the state of emergency on the functioning of the justice system and the rights of those being tried.

32. He noted that in a report published on 18 February 1993, the Committee on the Rights of the Child had stated that children in southern Sudan were subjected to a form of forced labour or slavery. He would like the delegation to comment on that finding.

33. Referring to numerous cases of extrajudicial executions of civilians by the army or pro-government militias between 1989 and the end of 1992, he wondered whether those were actual facts or baseless rumours. Since the Government had decided to investigate some of the incidents, the Committee should be informed of the findings of the investigations. In that regard, he drew the delegation's attention to the fact that some Governments systematically sent the Committee copies of relevant reports.

34. Mr. SONG Shuhua said that it was difficult to implement a human rights convention in a war-ravaged country. On the other hand, the report was not very clear as to the situation in the regions that were not at war.

35. Paragraph 12 of the report stated that "Until the promulgation of the Shariah in 1983, the legal system in operation in the Sudan was based on English common law". However, it seemed that changes had been made since 1989. Had those changes strengthened the implementation of Islamic law? Was the legal system still influenced by English law?

36. According to paragraph 18 (b), existing political and social institutions had been abolished under a constitutional decree, but paragraph 26 mentioned an Employees Trade Unions Law. What was the real situation of trade unions in the Sudan?

37. According to paragraph 20 of the report, the Revolutionary Council had established "a federal system of government, as being the most suitable for the Sudan in response to the demands of the South". He wondered whether the delegation could clarify that point.

38. Based on the information he had seen, he wondered to what extent "women's rights have been guaranteed, in complete equality with men, in all walks of life, politically, socially, economically and culturally" (para. 23).

39. According to paragraph 54, the Sudan had a large foreign community from neighbouring countries, in particular large numbers of refugees. It would be useful to have statistics on the number of refugees and foreign residents in the Sudan.

40. Finally, concerning the implementation of article 6 of the Convention, he wondered what reparation was available to victims of a violation of the rights mentioned in paragraphs 70 and 71 of the report.

41. Mr. van BOVEN noted that the report incorporated the country's fifth, sixth, seventh and eighth periodic reports and covered the period 1986-1992. He welcomed the Government's determination to fulfil its obligations to the Committee, the more so in view of the critical situation in the country. The reports of other United Nations human rights treaty bodies clearly reflected that situation and the fact that a state of emergency was still in force in the Sudan made international supervision of the human rights situation even more necessary.

42. Noting that the National Salvation Revolution Command Council, which had taken power in 1989, had issued constitutional decrees aimed at abolishing political parties and trade unions (para. 18) and that those decrees had as their main aim "the deterrence of any possible opponents of the Revolution" (para. 22), he wondered whether revolution could justify the adoption of absolutely any type of measure, whether it could be conducted at the expense of the welfare and lives of human beings, and what were its limits. He believed the human rights instruments were intended to set limits.

43. Religious considerations and ethnic or racial considerations, were often intertwined and religious questions had a bearing on the Committee's mandate. It was significant in that connection that the International Convention on the Elimination of All Forms of Racial Discrimination had been prepared at the same time as the instruments on religious intolerance. During the Human Rights Committee's examination of the report of the Sudan, the Sudanese representative had said that the rights laid down in existing human rights instruments should be re-examined in the light of the increased importance attached by Muslim countries in recent years to the implementation of the Shariah. Did that imply a challenge to the validity of the International Convention on the Elimination of All Forms of Racial Discrimination? On the same occasion, the Sudanese representative had said that punishments prescribed in Koranic law were not considered cruel or degrading because they had been decreed by God. The premise that certain penalties were a direct emanation of God's will ruled out debate. The question transcended human reason. The representative had also said that apostasy was a social danger comparable to treason in countries under different systems of law. A similar argument occurred in paragraph 50 of the report, which stated, in connection with marriages between persons of different races: "For a non-Muslim wishing to marry the daughter of an Arab Muslim, the only requirements are conversion to Islam and the financial ability to maintain the spouse." Paragraph 64 stated: "As far as freedom of thought is concerned, the only restriction is that the abandonment of Islam and embracing of another faith constitutes the crime of apostasy in Islam, which is punishable by death". The impression given was that the restrictions were minor, whereas they were a matter of life or death. They were a matter of concern and fell, either directly or indirectly, within the Committee's mandate.

44. Although the report of the Sudan had been prepared according to the Committee's guidelines, he did not believe it gave sufficient information on the actual situation in the country.

45. In view of the recently published ILO report on slavery, especially child slavery, in which the Sudan was mentioned, he asked the ILO observer to supply further information in that regard.

46. Mr. ABOUL-NASR expressed his condolences on the death of Mr. Mohammed Omar Beshir, a Sudanese expert who had been a member of the Committee a few years earlier. The Sudan was a neighbour of his own country and he was well acquainted with its problems. He was certain that the internal conflict in the Sudan was not a religious war. The slogans of the insurrectionary movement in the South referred to democracy. It was important not to view the conflict in terms of the currently fashionable campaign

against Islam, which was being set up in some quarters as the public enemy of Western civilization, after communism. The record in the Sudan was not unblemished, but care must be taken not to confuse issues. Mr. van Boven had spoken of the linkage between racial and religious questions. On that point, he noted that in the General Assembly, the convention on racial discrimination and the question of a convention on religious intolerance had always been treated separately. The International Convention on the Elimination of All Forms of Racial Discrimination had been adopted in 1965, whereas a convention on religious intolerance was still being prepared in the Commission on Human Rights. Racial discrimination might have religious connotations, but not to the extent that some claimed. In that connection, article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination mentioned race, colour, descent or national or ethnic origin, but not religion.

47. The Sudan's eighth periodic report (CERD/C/222/Add.1) had been drafted according to the relevant guidelines and responded to some questions raised earlier. It was not, however, fully satisfactory. He agreed with Mr. van Boven that a revolution could not be used years later to justify emergency measures. Whatever the value of a revolution, things should eventually return to normal and emergency measures should be ended, or else the system of government was a dictatorship.

48. He was not familiar with the ILO report on slavery mentioned earlier. He noted, however, that slavery had been abolished in the Sudan. It was true that particular practices were sometimes considered to represent a new form of slavery. But that was true of places other than the Sudan, for example the conditions of workers and especially foreign workers in certain countries; he was thinking in particular of the conditions of employment of Mexican migrant farm workers in California. Slavery in the strict sense of the term did not exist in the Sudan.

49. Mr. van BOVEN said that he was anxious to avoid any misunderstanding between Mr. Aboul-Nasr and himself. In 1962 the General Assembly had decided to prepare separate declarations and conventions on racial discrimination and religious intolerance. It was obvious, however, that religion played an important part in many conflicts now taking place. One example was the religious factor in national and ethnic conflicts in the former Yugoslavia. He agreed with Mr. Aboul-Nasr that Islam was currently the target of a campaign that sought to make it into a common enemy, but he could assure Mr. Aboul-Nasr that he was not a supporter of that campaign. The point he had tried to make was that if a policy contrary to human rights was implemented in the name of a religion, it was difficult to discuss the policy if the persons implementing it invoked a divine revelation that took precedence over any other principle, including those of the human rights instruments. Far from being hostile to Islam, he wished to see a greater dialogue among religions.

50. Mr. ABOUL-NASR thanked Mr. van Boven for his explanation and said that he also hoped for dialogue among religions. They all had similar standards.

51. Mr. GARVALOV said that the Sudan was an Arab and Islamic country afflicted by a civil war and mass human rights violations. Despite that, the Sudanese Government had prepared a report according to the guidelines and engaged in self-criticism. That was in striking contrast to earlier reports that had denied any discrimination and simply said that discrimination was condemned by Islam. The language of the eighth periodic report was more careful and more honest. A comparison with the report of Qatar, for example, showed that although the Sudan's legal system was based on the Shariah, it did not apply the Shariah itself in the manner described in the eighth periodic report of Qatar (CERD/C/207/Add.1).

52. Turning to certain parts of the report, he noted that in paragraph 31 concerning article 2 of the Convention, it was stated that "mixed marriages between different ethnic and racial groups or groups of different national origins are not only encouraged but have become a fact of life". However, that appeared to be true only with regard to Muslims, and not between Muslims and the followers of other religions. That was confirmed by paragraph 50 which stated that "For a non-Muslim wishing to marry the daughter of an Arab Muslim the only requirements are conversion to Islam ...". In addition, paragraph 46 stated that "Islam prohibits discrimination on the basis of race, colour or ethnic or national origin". But that was not true only of Islam: Christianity had the same values. Why did the report not mention the attitude of the Christians in the southern part of the country?

53. He could not accept the reservation in paragraph 56 concerning article 5, to the effect that women had to meet additional conditions to be allowed to travel abroad "by virtue of their physiological weaknesses". Concerning freedom of movement, mentioned in paragraph 28 concerning article 2 of the Convention, he recalled that Mr. Beshir, the Sudanese expert to whom Mr. Aboul-Nasr had paid a tribute, had once arrived at a session late and explained that he had had difficulties in leaving his country.

54. Finally, account should be taken of the enormous difficulties facing the Sudan. That had been illustrated that very morning by the television station CNN, which had broadcast pictures of children suffering from hunger in Southern Sudan.

55. Mr. BANTON thanked Ms. Sadiq Ali for her detailed comments on the eighth periodic report and shared her sorrow concerning the tragedy in the Sudan. He associated himself with Mr. Aboul-Nasr's condolences on the death of Mr. Beshir, a former member of the Committee, who, to his credit, had never hesitated to criticize his Government's reports when they fell short of his ideals.

56. It was undeniable that the civil war in the Sudan had an ethnic component. The Government should have taken that more into account in its report and indicated the consequences, particularly in regard to the attitudes of combatants and the people.

57. Paragraph 29 of the report, referring to article 2 of the Convention, spoke of integration policies; it said that "every gathering, assembly, trade union, government department, army, police force and school, particularly in

the central part of the Sudan, is mixed to a varying degree". Integration policies were certainly in keeping with the contents of article 2 of the Convention, which stated in paragraph 1: "States Parties ... undertake to pursue ... a policy of eliminating racial discrimination in all its forms ...". However, the Committee should be better informed of the effects of the policy. The next report should place more emphasis on explaining the methods used to implement it, as well as its successes and failures. It might not be possible to ask the Sudan to provide statistics as precise as those established in the richer countries, but at least some qualitative descriptions should be provided. When the term "mixed" was used, the contents of that mix should be explained and an idea given of its extent. For example, the report should give the percentages of northerners and southerners serving in the army and the police compared with the percentages in the population as a whole.

58. In its conclusions on the initial report of the Sudan (CRC/C/3/Add.3), the Committee on the Rights of the Child had noted among the positive aspects of the report Sudan's willingness to review legislation concerning practices that might affect the health of children, such as genital mutilation. That aspect also fell within the purview of the International Convention on the Elimination of All Forms of Racial Discrimination, in article 5 (e) (iv). The Committee should be given more information on the Government's policy in that respect.

59. Mr. SHAHI paid a tribute to Professor Beshir, a person of the highest intellectual integrity.

60. When the Committee assessed the way in which the Sudan fulfilled its obligations, it should bear in mind that there was an armed conflict in the country and that a state of emergency had been proclaimed.

61. Paragraph 17 of the report stated that torture was prohibited. However, there was information indicating violations of that prohibition. If that was the case, were measures being taken to end such practices? It was not sufficient to list a number of legislative provisions and other rules; specific information should be given on the way in which they were applied.

62. Article 64 of the new Penal Code (para. 48 of the report) did not fully comply with the obligations laid down in article 4 of the Convention.

63. It was sometimes difficult to separate religious questions affecting human rights and questions relating to racial discrimination. As Mr. Aboul-Nasr had said, religious questions and ethnic questions relating to human rights sometimes overlapped.

64. After considering the initial report of the Sudan (CCPR/C/45/Add.3), the Human Rights Committee had said in one of its final comments that it was possible for the Sudanese authorities to find a way to reconcile the Sudan's freedom to live within a social system of its own choosing with the Committee's duty to ensure respect for human rights. The Committee for the Elimination of Racial Discrimination might well endorse that statement.

65. Mr. FERRERO COSTA stressed the effort the Sudan had made in submitting its report in spite of the civil war. He endorsed the views expressed by Ms. Sadiq Ali and the other members of the Committee. In particular, he shared Mr. Banton's view that the civil war had an important ethnic component.

66. The Commission on Human Rights currently had before it a draft resolution on the situation of human rights in the Sudan (E/CN.4/1993/L.32), which spoke of serious human rights violations, especially summary executions, detentions without due process, forced displacement of persons and torture. The draft also mentioned the mass exodus of refugees into neighbouring countries and the large number of internally displaced persons and victims of discrimination in the Sudan, including members of minorities who had been forcibly displaced. In paragraph 3 of the draft, the sponsors proposed that a special rapporteur should be appointed on the situation of human rights in the Sudan, and in paragraph 8 they called upon the Government of the Sudan to comply with applicable international human rights instruments, in particular the International Convention on the Elimination of All Forms of Racial Discrimination.

67. Paragraph 18 of the report stated that in 1989, the legislative and political organs, political parties and trade unions had been abolished by decrees and replaced by new bodies. He would like further information on those new bodies, in particular on how the legislative, executive and judicial powers were now structured.

68. Paragraph 22 stated that the restrictions contained in the Decrees mentioned were no longer being rigorously applied. Could the Sudanese delegation provide clarifications on the way in which the restrictions were applied?

69. He would welcome more details on the acceleration of the national integration process mentioned in paragraph 29 of the report.

70. Paragraph 36 stated that the political parties had been abolished in 1989. Did that mean that they were still prohibited?

71. It was also stated in paragraph 37 that all Sudanese were free to participate in the organizations of the revolution, without discrimination on any grounds, in their individual capacities and not as representatives of political parties or groups. Would it be possible to have some clarifications on the organization of political and social life?

72. He would also like further information on the penalties laid down in the Penal Code for acts of racial discrimination (paras. 27 and 48 of the report).

73. Paragraph 64 of the report stated that a Muslim who was guilty of apostasy was liable to the death penalty. That showed how closely religious matters were linked to human rights. The Committee should give serious thought to that problem.

74. Mr. LAMPTEY said that the population of the Sudan was composed of two major groups: the Arab Muslims in the North and the blacks in the South, who were mostly Christians and Animists. Because of that, it was difficult to dissociate race and religion in the Sudan. The civil war raging in the Sudan was due to the fact that the blacks in the South, mostly Christians, felt that they were disadvantaged in comparison with the population of the North. The National Salvation Revolutionary Command Council, which had taken over power in 1989, had exacerbated the conflict by seeking to impose on the Christian population of the South a social order that was based on the Shariah. Therefore, it should be stated clearly that the Black Christian population in Southern Sudan were victims of discrimination and that the report did not appear to indicate that the Sudanese Government was attempting to redress that situation.

75. Mr. ABOUL-NASR said that he would like to know the exact demographic composition of the southern part of the country. According to his information, Christians were only the third largest group, behind the Muslims and the Animists, who were the largest group.

76. Paragraph 50 of the report said that for a non-Muslim wishing to marry the daughter of an Arab Muslim, he need simply convert to Islam. Was the word "Arab" in that sentence a mistake? If not, that would be an obvious case of racial discrimination.

77. Mr. DIACONU said that the Sudanese authorities should be told that, in the interest of the people and the country, all institutions should respect the provisions of the Convention. In its next report, the Sudanese Government should also give clearer and more thorough explanations of the way in which it was fulfilling its obligations under the Convention.

78. The CHAIRMAN, speaking in his personal capacity, congratulated the Sudanese Government for continuing its dialogue with the Committee. Its willingness to hold a dialogue was especially important as Sudanese society was multiracial, multicultural and multireligious, as stated in the report.

79. Paragraph 14 of the report spoke of special criminal courts formed by order of the Chief of Justice. Under what circumstances could such courts be established, and what were the laws governing them? Were they empowered to apply special rules? If so, did they not risk becoming arbitrary?

80. Paragraph 18 (b) said that trade unions had been abolished. Were they still prohibited?

81. Finally, paragraph 65 said that every citizen could freely express his or her opinions, especially within the legislative bodies and the steering committees of the trade unions, which elsewhere in the report were said to have been abolished. What was the exact situation, and was freedom of opinion really guaranteed?

The meeting rose at 1 p.m.

CERD/C/SR.969
16 March 1993

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 969th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 March 1993, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 3.20 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)*

Draft general recommendation on the training of law enforcement officials in the protection of human rights

1. The CHAIRMAN invited the Committee to consider the draft general recommendation on the training of law enforcement officials in the protection of human rights, which had been submitted by Ms. Sadiq Ali and which read:

> "It is recognized that, apart from their law and order duties, the law enforcement officials have another function to perform: to uphold the rule of law by protecting the law-abiding citizen and getting the guilty prosecuted.
>
> "The prevailing perception of the law enforcement officials by the common person is one who has vast power to use force as the coercive arm of the State and which in practice is exercised arbitrarily, unjustly and without accountability. The concept of the police befriending people has not taken root.
>
> "The law enforcement officials do not have much sensitivity to basic human rights. Above all, they have no training or education worth the name, which would help them to overcome those handicaps. Excessive politicization of the police force is one of the main causes. The politicization of the police force by politicians must be relentlessly eliminated. The crying need is for proper comprehensive education of the police personnel at all levels. There should be a compulsory course in human rights and it must be drilled into every law enforcement official that their primary loyalty is to the Constitution and the law:
>
> - In implementing article 7,
> - Calls upon States parties to improve the training of law enforcement officials with a view to improve their respect of international human rights instruments, including CERD,
> - Law enforcement officials should always, when fulfilling their duties, give full respect to the human dignity of the person they are dealing with,
> - and to abide by the United Nations Code of Conduct for Law Enforcement Officials."

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* Resumed from the 967th meeting.

2. Ms. SADIQ ALI said that, in dealing with growing unrest, law enforcement officials had not been carrying out their duties properly; in fact, in certain situations, their actions had been of a provocative nature, leading to even greater turmoil. It was therefore appropriate for the Committee to adopt a general recommendation on the training of law enforcement officials in the protection of human rights.

3. Mr. van BOVEN said that the draft recommendation rightly referred to the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in 1979. It would be useful for the Committee to have that text available for its consideration of the recommendation on the training of law enforcement officials.

4. Mr. BANTON said that, while he welcomed the intent of the draft recommendation, he had a number of reservations about its content. In the first sentence, the phrase "apart from their law and order duties, the law enforcement officials have another function to perform" was not accurate: the problem was not the other functions of law enforcement officials, but, rather, the way in which they performed their law and order duties.

5. The draft recommendation should take account of the situation in all countries. For example, the second sentence of the third paragraph, which stated that law enforcement officials "... have no training or education worth the name", was not an accurate picture of the situation in a number of countries. The proposal in that same paragraph that a compulsory course in human rights should be "drilled" into every law enforcement official was also not universally applicable; other training methods had proved to be much more effective in certain cases.

6. Mr. ABOUL-NASR said that the motive behind the draft recommendation was noble, but the issues to which it referred had already been dealt with elsewhere. It should focus more on racial discrimination. As it stood, it referred to general human rights matters and could thus have been prepared by any of the various human rights bodies.

7. Mr. WOLFRUM said that such a draft recommendation was valuable even though the matter had already been dealt with by the General Assembly. However, as it stood, the recommendation needed improvement. He agreed with Mr. Banton that any action that constituted a violation of human rights was contrary to the principle of law and order. The recommendation should also place more emphasis on the excessive use of power by law enforcement officials, a matter that had not been fully covered in the Code of Conduct for Law Enforcement Officials.

8. Since the Committee had agreed the previous day that general recommendations should be written in the "narrative" style, the text under consideration would have to be redrafted.

9. Mr. SHAHI said that the general recommendation was a useful initiative in view of the frequent complaints about the arbitrary actions of law enforcement officials. In addition to treating human rights in general, the recommendation should refer more specifically to matters dealt with in the

Convention. In that connection, the first paragraph might be amended to refer to all citizens without discrimination on the basis of race, colour, descent, or national or ethnic origin. It might also be appropriate to add a reference to the increasing incidence of discrimination based on religious grounds.

10. In order to be as comprehensive as possible, the recommendation should take account of the content of the Code of Conduct for Law Enforcement Officials. It was essential to draw the attention of States to situations in which law enforcement officials had taken the law into their own hands or had taken advantage of corrupt practices or complexities in a particular legal system.

11. The CHAIRMAN said that he assumed that Ms. Sadiq Ali would provide the Committee with an amended text taking due account of the comments made.

Draft general recommendation on non-citizens (concluded)

12. The CHAIRMAN invited the Committee to consider the amended version of the draft general recommendation on non-citizens which read:

> "ICERD article 1 (1) defines racial discrimination. Article 1 (2) excepts from this definition actions by a State party which differentiate between citizens and non-citizens. Article 1 (3) qualifies article 1 (2) by declaring that, among non-citizens, States parties may not discriminate against any particular nationality.
>
> "The Committee has noted that article 1 (2) has on occasion been interpreted as absolving States parties from any obligation to report on matters relating to legislation on foreigners. The Committee therefore affirms that States parties are under an obligation to report fully upon legislation on foreigners and its implementation.
>
> "The Committee further affirms that article 1 (2) must not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in other instruments, especially the Universal Declaration on Human Rights, International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights."

13. Mr. ABOUL-NASR said that, as the amended text met many of the concerns expressed in earlier discussions, he was ready to endorse it. However, he did not agree with the first sentence, which stated that article 1 (1) of the Convention defined racial discrimination. It might be better to begin that sentence with the actual wording of article 1, namely, "In this Convention".

14. Mr. LAMPTEY said that he endorsed the amended draft recommendation. In his view, the first sentence implied that the definition provided was intended for the purpose of the Convention.

15. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee adopted the draft general recommendation on non-citizens, as amended.

16. It was so decided.

17. Mr. GARVALOV noted that, in the second line of the last paragraph, it would have been appropriate to add the words "of the individual" after the words "rights and freedoms", as both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights referred to the individual.

18. Mr. BANTON said that the points made by Mr. Garvalov and Mr. Aboul-Nasr should be borne in mind by the Committee when it drafted a fuller explanation of article 1 of the Convention.

Draft general recommendation on public life

19. The CHAIRMAN invited the Committee to consider the draft general recommendation on public life, which had been submitted by Mr. Banton and which read:

> "1. The definition of racial discrimination in CERD 1 (1) limits the Convention's application to fields of 'public life'. Article 5 helps define the nature and extent of these fields.
>
> "2. In some countries steps have been taken [a] to except fields of private life from any non-discrimination clause in the Constitution, and [b] to define these fields in very broad terms. The question therefore arises whether rights in the private sphere may not negate rights in the public sphere, and, if so, whether this is compatible with the Convention.
>
> "3. For example, Zimbabwe's constitution [chapter III, s. 23] defines a right to protection from discrimination drafted with the interests of the white settler minority in mind. There is also a constitutional right to privacy which has made it easier for whites to maintain exclusive social clubs. After independence whites built private schools, leaving the public schools to be almost exclusively black.
>
> "4. In South Africa, following upon the repeal of the Separate Amenities Act, new means were introduced to attain the same ends. For example, municipal libraries have introduced highly differential membership fees for residents and non-residents; the latter may have to pay R 500 [nearly US$ 100] to borrow books. New by-laws enable white neighbourhoods to have their own police and oblige any blacks who move in to behave themselves in a manner acceptable to their white neighbours. These trends are being described as the privatization of apartheid.
>
> "5. Accession to ICERD binds the State. What if its citizens have entered into a private agreement of a discriminatory character and call upon the State to enforce that agreement against a party who has breached it? Or if they maintain such an agreement without State assistance? ICERD 5 (e) (iii) appears to cover discriminatory housing covenants, but it is less certain whether article 5 (c) covers all the aspects of the 'white primary' in which a private body influences the selection of electoral candidates, and which has provoked so many cases before

federal courts in the United States of America. It should always be remembered that there are States parties to ICERD which have legislated comprehensively against State discrimination but have done very little to regulate discrimination in the private sphere.

"6. Because of differences between the legal orders of States, this is not a simple matter, but, to start discussion in the Committee, I propose:

"Recommendation

"CERD calls upon States parties to ensure that the right to equality before the law in respect of ICERD article 5 (c), (d) and (e) is not negated by any definition of private life that has the effect of impairing the recognition, enjoyment or exercise of human rights in any field of public life."

20. Mr. BANTON said that the draft general recommendation on public life also related to article 1 of the Convention. The text was not in narrative form and might need to be redrafted.

21. The recommendation had arisen partly out of concerns which had been expressed by South African human rights lawyers about the "privatization of apartheid", which referred to the way the law was already being used to enable municipalities and other bodies regarded as private corporations to be exempt from the effect of anti-discriminatory provisions. Proposals of that same nature had been brought before the South African Parliament. The general recommendation could be of assistance to human rights lawyers in South Africa during the constitutional debate. Similar questions could be raised with regard to chapter 3 of the Constitution of Zimbabwe. Adopting the general recommendation would therefore strengthen the Committee's position when it considered the initial report of that country.

22. Mr. WOLFRUM said that the recommendation should be redrafted in narrative form. In his view, the wording of paragraph 1 unduly limited the scope of the Convention. The application of the Convention was not limited to public life, as could be seen from a number of the rights referred to in article 5. In fact, it had been pointed out in commentaries that one of the important aspects of the Convention was that it not only limited the activities of States, but also had a significant impact on relations between private individuals.

23. Paragraph 4, which discussed the situation in South Africa, related to the problem of discrimination in fact. While that matter had already been dealt with in the Convention, the Committee might wish to draw attention to it again by means of the draft recommendation. There also seemed to be a contradiction between paragraphs 1 and 5, in terms of the scope of the Convention.

24. The last paragraph, namely, the recommendation itself, used the words "right to equality before the law". However, equality and non-discrimination were not necessarily synonymous. It would be better to use the word "non-discrimination", thus bringing the recommendation into line with the Convention.

25. Mr. FERRERO COSTA said that the draft recommendation dealt with an important issue which deserved further study. However, he could not accept it in its present form. The statement in the first paragraph of the introduction that the Convention was limited to the field of "public life" was much too restrictive.

26. Mr. van BOVEN said that, when the convention had been drafted, article 1 (1) had been deliberately restricted to the field of public life. The intention had been to preserve the right to invite or not to invite a certain person into one's home, for example, or to allow private clubs to choose their own members, as in the example of Zimbabwe quoted by Mr. Banton. However, the concept of "public life" had been interpreted quite widely even during the drafting of the Convention. Article 5 (f) had been included to indicate that the Convention applied to places or services intended for use by the general public, such as public transport, restaurants and theatres, even if they were privately owned.

27. In any case, the concept of "public life" was becoming broader and broader in many countries, including his own: in many cases, public life was being "privatized", with the State maintaining some responsibility for many areas which had, strictly speaking, moved into the private sphere. Instruments such as the Convention on the Elimination of all Forms of Discrimination against Women did not include the concept of public life and it had been argued that that Convention also applied to relationships between individuals, for instance, in the case of domestic violence.

28. Mr. DIACONU said that he agreed with the broad definition of public life suggested by Mr. Wolfrum. After all, later articles of the Convention, particularly article 5, showed that the intended scope of the Convention as a whole was much broader than might be thought from a strict interpretation of article 1 (1).

29. Another important issue which the general recommendation ought to address was that of the relationships which the Convention was intended to cover, such as the relationship between an individual and the State, the relationship between individuals or the relationships between an individual and a legal entity not connected with the State. In his opinion, the Convention clearly applied to all three types of relationship, as shown, for example, by article 5 (f), which dealt with the right of access to places or services including those owned by legal entities, intended for use by the general public.

30. The general recommendation should not refer to any State by name; perhaps Mr. Banton could revise his text accordingly. He shared Mr. Wolfrum's doubts about the words "equality before the law", which should be replaced by the

word "non-discrimination". The recommendation referred to "human rights" in general, which went beyond the Committee's terms of references: it should refer specifically to "discrimination".

31. Mr. ABOUL-NASR said that, in his opinion, general recommendations were an interpretation of the Convention. Unless they were prepared very carefully, taking the *travaux préparatoires* of the Convention fully into account, there was a danger that the interpretation might be incorrect. The Committee's early general recommendations had actually served to limit the scope of the Convention.

32. As he had said before, he considered that the Committee adopted too many general recommendations and adopted them without proper consideration: General recommendations should be adopted only to clarify a genuine point of disagreement between the Committee and States parties which had arisen on a number of occasions. After all, the general recommendations were not binding on States parties in any way.

33. Mr. YUTZIS said that Mr. Banton's draft recommendation related to a very important issue. However, it was no longer appropriate to refer extensively to the policy of apartheid in South Africa, as the draft recommendation had done. Times had changed, as Mr. Banton himself had acknowledged by his use of the words "privatization of apartheid". Modern racial discrimination took very subtle forms, although they still clearly came within the scope of the Convention. The Committee had noted such examples of subtle racial discrimination in many States parties, although the States concerned often denied that there was any racial discrimination in their territory at all. That was exactly the situation in which a general recommendation was needed: a phenomenon which occurred in a large number of States parties and which the Committee needed to explain in greater detail.

34. Mr. Banton's draft required further work, but it dealt with a genuine problem arising from the analysis of many State party reports and was a good basis for discussion.

35. Mr. WOLFRUM said that, even if the concept of "public life" had been deliberately introduced to limit the scope of article 1 (1), he considered that the Committee did not necessarily have to maintain that restricted scope. The Vienna Convention on the Law of Treaties provided that the preparatory work of a treaty could be consulted to confirm an existing interpretation or if no other means of interpretation existed. That principle contrasted with the interpretation of national legislation in countries such as his own, where the preparatory work was consulted extensively. Moreover, article 5 of the Convention was clearly not restricted to the field of public life, since it referred to relationships between individuals, rather than between individuals and the State, in article 5 (b) and 5 (e) (iv).

36. The general recommendation might begin with a reference to article 5 of the Convention, thus clearly including the concept of relationships between individuals. Such a measure would prevent States from claiming that the recommendation did not apply to the private sphere.

37. Mr. van Boven had referred to the "privatization of public life". However, in Germany at least, even if certain aspects of public life were privatized, they were still subject to regulation by the State. In his view, the same principle applied in the present case.

38. He hoped that the Committee would be able to reach agreement on the general recommendation soon. However, even if it could not, the debate had been a valuable one and had shed some light on a complex aspect of the Convention.

39. Mr. SHAHI said that the real intention of the general recommendation was to show that the Convention applied to "privatized discrimination", just as it did to discrimination which was indisputedly within the field of public life. However, it was still not clear exactly how broad the scope of the recommendation was intended to be. It referred specifically to article 5 (d) of the Convention, but only two of the civil rights listed in that subparagraph - the right to marriage and choice of spouse and the right to own property - could possibly be considered part of the private sphere. Perhaps the general recommendation should refer specifically to articles 5 (c), 5 (d) (iv) and (v) and 5 (e). The words "any field of public life" should perhaps be replaced by the words "any other field of public life" to follow the wording of article 1 (1). In any case, the debate on Mr. Banton's draft recommendation had done much to clarify the meaning and scope of article 5 of the Convention.

40. Mr. RECHETOV said that, although he was grateful to Mr. Banton for his valuable work in preparing the draft recommendation, he agreed with Mr. Aboul-Nasr that further discussion was needed before it could be adopted. It was a fundamental principle in international law that the sources of particular terms, and the reasoning that had led to their adoption, should be taken into account when definitions were formulated: for example, the term "public order", as used in article 18, paragraph 3, of the International Covenant on Civil and Political Rights, had been discussed at length in the Human Rights Committee. Care should be taken not to approve terms which were not in line with those used in other human rights instruments.

41. Mr. LAMPTEY said that, while he shared the views of Mr. Aboul-Nasr on recommendations generally, he had no difficulty with the one now under consideration because of the very relevant points made in the introduction concerning Zimbabwe and South Africa. In its final form, however, the recommendation should not include the text of that introduction. It would be more appropriate to have a brief explanatory chapeau containing a definition of the term "public life".

42. Mr. FERRERO COSTA said that he disagreed with the views of some members of the Committee about the interpretation of international instruments. As Mr. Wolfrum had pointed out, the Vienna Convention on the Law of Treaties contained specific guidelines on how treaties were to be interpreted. Those guidelines made it clear that neither the preparatory work done in drafting the treaty nor points made in the debate at the time the text of the treaty

was adopted, should be taken into account in interpreting it. On that point, therefore, he agreed with Mr. Wolfrum, and disagreed with Mr. Rechetov and Mr. Aboul-Nasr.

43. As far as the draft recommendation itself was concerned, it was clear that the Convention covered protection against acts of discrimination in the private sphere, as well as acts of discrimination in public life. However, there was not yet sufficient agreement on the text of the recommendation for it to be adopted and he suggested that Mr. Banton should redraft it in the light of the comments made.

44. Mr. BANTON, replying to the point raised by Mr. Lamptey, explained that he had not meant paragraphs 1 to 6 of the introduction to be part of the recommendation; they had been intended simply to explain his reasoning. He had been somewhat constrained by the format used hitherto in the preparation of recommendations, and that was why he had not dealt with the very relevant points made by Mr. Shahi. He would be glad to redraft it in more of a narrative format and resubmit it for consideration at a later stage.

Draft general recommendation on segregation

45. The CHAIRMAN invited the Committee to consider the draft general recommendation on segregation, which had been submitted by Mr. Banton and which read:

> "1. When the General Assembly adopted the Convention it decided not to include in it any reference to specific forms of racial discrimination (A/C.3/SR.1311 paras. 24 and 35). In its reference to apartheid, article 3 was an exception; this article had been adopted two days earlier. The exception was justified after the event on the grounds that, as stated by one delegate, 'the South African Government's claim that apartheid was not racial discrimination made it essential that the unanimous opinion to the contrary should be clearly stated in the Convention'; and, as stated by another, 'apartheid ... differed from other forms in that it was the official policy of a State Member of the United Nations ... since no other country had instituted that form of racial discrimination, the reference to apartheid was directed exclusively to the Government of South Africa' (A/C.3/SR.1313, paras. 10 and 18).
>
> "2. That a law was drafted with one object in mind does not mean that the same law may subsequently be found to render illegal some form of conduct that was not in contemplation when the law was enacted.
>
> "3. In any event, the text itself offers grounds for a broader reading than has been conventional hitherto. The reference to apartheid may have been directed exclusively to South Africa, but if the reference to segregation were also directed exclusively to one country, the article would not have required States in the plural to act 'in territories under their jurisdiction'. The article as a whole prohibits all forms of segregation. According to the text, States parties condemn both racial segregation and apartheid'. Segregation is mentioned first, consistent with the view that apartheid is to be seen as one form of segregation.

In view of the changes in South Africa it could be timely for CERD to explain that the condemnation of segregation would remain even if apartheid were completely eliminated.

"4. Support for this interpretation can be drawn from other international instruments, from English language dictionaries and practice, and national laws.

"5. The International Convention against Apartheid in Sports, article 1 (a) defines apartheid as 'a system of institutionalized racial segregation and discrimination', thereby acknowledging that there may be uninstitutionalized segregation. There may be de jure segregation and de facto segregation.

"6. The current (1990?) edition of The Oxford English Dictionary lists the two first senses of the word 'segregation' as '1. The action of segregating ...' and '2. The condition of being segregated ...' As '1.f' it includes 'The enforced separation ...' The 1984 Longman Dictionary of the English Language gives segregation as 'the separation of a race, class or ethnic group, esp. by discriminatory means ...', acknowledging that there are also other means. Class segregation does not result from legislation, while segregation in employment, education and residence may have different origins.

"7. An example of one prohibition is found in the United States Civil Rights Act, 1964, Title VII Sec 703(a) which makes it unlawful for an employer to limit, segregate or classify his employees.

"8. The British Race Relations Act 1976, Sec. 2 declares that 'segregating a person from other persons on racial grounds is treating him less favourably than they are treated'. The Commission for Racial Equality has found that the transfer of a child to another school to be away from Asian classmates constituted segregation.

"9. When the 10th periodic report of Sweden was considered by CERD the Swedish representative said that projects to combat segregation in housing were under way. 'It often happened that, on their arrival in an unknown country, foreigners preferred to gather together.' There was a difference of opinion between two members of the Committee as to whether voluntary actions could result in segregation, but the Swedish representative agreed that the children of immigrants might experience problems because their parents had chosen to settle together; his Government was currently examining the implications of this (prov CERD/C/SR.902, pp. 5 and 10). The difference of opinion within the Committee centre upon whether segregation is to be defined only as 'the action of segregating' or also includes 'the condition of being segregated'. It may be added that social researchers in English-speaking countries, notably geographers, regularly use census data to make calculations of ethnic residential separation as a fact, or condition, and call it segregation, without going into the complex question of causation. The point to remember is that this separation can be a cause of racial disadvantage and in turn give rise to discrimination.

> "General recommendation
>
> "The Committee on the Elimination of Racial Discrimination calls the attention of States parties to the wording of article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination, by which States parties undertake to prevent racial segregation and apartheid in territories under their jurisdiction.
>
> "The Committee affirms that the condition of being racially segregated can arise from causes other than intentional action and can have undesired consequences both for those who are segregated and their descendants. In many societies in which there are no distinct barriers between races, economic and social segregation operates in such a way that there is a greater probability that persons of certain races will find themselves at a disadvantage relative to others.
>
> "The Committee invites States parties to review all practices which can give rise to racial segregation, intentional and unintentional, to undertake preventive action, and to notify the Committee of their progress in this respect in their periodic reports."

46. Mr. DIACONU said the draft recommendation seemed clearer and more to the point than the previous one and he would encourage Mr. Banton to continue to work on it. It was true that there was a tendency to some societies to go to extreme lengths to avoid discrimination by trying to segregate population groups with different national or ethnic origins; that approach was unproductive in the long term, since it led to even greater discrimination. Societies needed to be made aware, through education, of the dangers of such an approach.

47. The second sentence of the second paragraph of the draft recommendation itself beginning with the words "In many societies in which there are no distinct barriers between races, economic and social segregation operates in such a way that ..." might give rise to difficulties because it might be interpreted to mean that, in societies where there were such barriers, there would be no economic and social segregation. The text should make it clear that that trend was only one of a number of negative phenomena where discrimination was concerned.

48. Mr. YUTZIS said the draft recommendation rightly highlighted the fact that apartheid was only one of the ways in which segregation could manifest itself: the same phenomenon could extend in more subtle ways to other areas of social life. The distinction between systematic racism promoted by the State, and racism which had its origins in society itself, was of fundamental importance. A question which the Committee might consider was whether attempts by a State to make the practice of segregation official was purely an expression of its own will or rather a reflection of a latent consensus within society.

49. Mr. LAMPTEY said it was true that population groups with different national or ethnic origins than the larger community tended to settle together for mutual support and that such groups could consequently suffer from racial

discrimination. The difficulty, however, was how that problem should be solved, since the State could hardly pass laws making it impossible for any group of foreigners to settle in the same place. While a State party indeed had an obligation to ensure that such groups did not suffer from discrimination, it should not be placed under an obligation to change their way of life.

50. Mr. WOLFRUM said that he endorsed the draft recommendation, which focused on the point that segregation was the result both of intentional State action and of other circumstances, probably totally within the private sphere, and involving a particular population group. The issue had been raised previously in connection with a report by Denmark which had referred to a certain suburb of Copenhagen where it had been ruled that no apartment building should house more than a certain percentage of foreigners, including a given percentage of Turks. Mr. Aboul-Nasr had suggested at the time that such a rule was tantamount to segregation and had not been satisfied with the reply given by the representative of Denmark. That had probably been one of the situations which had prompted Mr. Banton to submit the draft recommendation.

51. Mr. van BOVEN said that apartheid was referred to in the ninth preambular paragraph of the Convention, which referred to "policies of apartheid, segregation or separation", and in article 5 of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, which referred to "governmental and other public policies of racial segregation and especially policies of apartheid". Article 3 of the Convention, however, went beyond policies and it was possible that, because of the wish of a group of persons to stay together, a de facto situation of segregation and apartheid could exist which was not necessarily the result of governmental or other public policies, but nevertheless came within under the scope of article 3.

52. A case comparable to the Danish case had occurred in the Netherlands when a municipal order which had been intended to promote integrationist policies had prohibited concentrations of foreigners or minority groups if they accounted for more than a certain percentage of the population of the area. The order had caused a dilemma because it had meant that racial criteria were being applied for the purpose of achieving integration. Eventually, the Dutch authorities had decided that the order was not in keeping with other legal principles. There were, of course, many examples in other large cities, such as New York, of concentrations of national groups living together. The problem was whether that practice which was the result of the fact that groups of persons wanted to live together should be considered desirable or whether it was considered undesirable only when the conditions in which such groups lived were less favourable than those of the rest of the population. The outcome of the Danish case might shed some light on the problem and provide guidance in the matter.

53. Mr. YUTZIS said that there had been another situation in the Netherlands which had been reported concerning school children belonging to ethnic groups, largely of Asian origin, and in which it had been suggested that there should be schools where they could be integrated into their own ethnic groups and where the percentage of pupils from white Dutch families would be kept low. When he had asked whether such arrangements were not tantamount to

segregation, he had been told by the Netherlands delegation that the intention had been to protect the cultural identity of the groups concerned. There had thus been a contradiction between the desire to protect cultural identity and the way in which segregation had been legitimized. Such action, which had been described as "positive discrimination", had been discussed by the Committee in the past, but no agreement had been reached. The draft recommendation as it stood was not sufficiently clear on those more subtle aspects of segregation.

54. Mr. RECHETOV said that, under the old totalitarian systems, when everything had been organized by the State, there had been many human rights violations, including acts of discrimination many involving the exile or the deportation of entire groups. The process had lasted for decades and its effects were still being felt in the countries of the former Soviet Union. The current situation in Moscow was in many ways similar to that in Denmark. Its increasingly high rate of crime was, in the minds of many persons, associated with the Caucasian element and, recently, a senior official of the Russian Federation had suggested that all Chechens should be sent away from Moscow and turned out of Moscow hotels. A different approach would have been preferable, but that sort of situation frequently occurred when, in the course of their duties, officials, whether administrative, police or military, applied restrictive measures on the basis of certain ethnic characteristics. The Committee might therefore try to determine at what level such action could be regarded as discriminatory so that States could adopt measures in accordance with their responsibilities under international law.

55. Mr. DIACONU said that, in his view, segregation meant acts aimed at artificially separating persons of a certain race, minority or ethnic group against their will and it included ethnic cleansing. The issue was not the desire of people to live or pursue cultural activities together.

56. Mr. SONG Shuhua said that the term "segregation" applied to a variety of situations from the various forms of apartheid in South Africa to the situation in big cities like New York, where ethnic groups wanted to stay together, so much so that some of their elderly members were unable, after a lifetime spent in such communities, to speak the language of the country. Among such groups, however, there was a natural process of transformation: their descendants, born and brought up in the country, no longer wished to live within the group. The problem was a very complex one and it called for specific administrative and legal measures if it was not to become even more difficult to solve.

57. The CHAIRMAN suggested that Mr. Banton should draft an amended text in the light of the Committee's comments.

58. Mr. BANTON said that he would try to reflect the views expressed in a new draft recommendation.

59. The term "preventive action" which he had used in the last paragraph of the draft recommendation was not intended to include anything which might conflict with the right to freedom of movement and residence within the border of the State provided for in article 5 (d) (i) of the Convention. Persons

naturally had that right, but, if its exercise gave rise to other problems, particularly for their children, it was to be hoped that States would recognize that those problems existed and report to the Committee on the action they were taking to solve them.

Draft general recommendation on effectiveness

60. Mr. BANTON, introducing the draft recommendation, said that, if the Committee so wished, he would resubmit it in a more narrative form, as in the case of the other draft recommendations.

61. The draft recommendation reflected the Committee's concerns and had to some extent been prompted by critical comments which the Committee had made in the past about the reports of some States parties. It read:

> "The attached proposal was drafted to generalize some of my criticisms of the tenth Austrian report. Such a general recommendation would systematize a line of questioning that has often been advanced in the Committee, and draw it to the attention of all States parties.
>
> "There were also reasons why the Committee should consider such a proposal in 1992. Some recent tendencies in Europe and North America have not been encouraging, and call for some response on the Committee's part.
>
> "At the end of the Maastricht summit in December 1991, the European Community's Council of Ministers was moved to issue a condemnation of racism and xenophobia, noting with concern that 'manifestations of fascism and xenophobia are steadily growing in Europe, both in the member states of the Community and elsewhere'. In the view of some observers a wave of racist violence has been sweeping Europe, with serious incidents in Austria, Belgium, Britain, Bulgaria, Czechoslovakia, Denmark, France, Germany, Hungary, Italy, Norway, Portugal, Sweden and Switzerland (vide pp. 9-17 of Striking A Balance: Hate Speech, Freedom of Expression and Non-discrimination, ed. Sandra Colliver, Article 19, London, 1992). These countries have all introduced legislation to meet obligations in connection with ICERD Art. 4. Does the record indicate that this legislation has been ineffective? Discussing the events in Germany, Rainer Hoffman believes that these do not prove the failure of the judiciary or of the laws. '... notwithstanding the undoubted importance of criminal law in the fight against racial hatred, it seems as if profound changes in the political climate in regard to aliens in general and asylum-seekers in particular are of even greater significance.' He concludes that as long as public statements about excessive immigration are not met with equally forceful statements about the need to respect human dignity, it is hardly surprising that some people 'are attracted by groups which aggressively proclaim nationalistic and neo-Nazi ideologies' (ibid., p. 170). The editor of this book maintains that 'The rise of racism and xenophobia throughout Europe, despite a variety of laws restricting racist speech, calls into question the effectiveness of such laws in the promotion of tolerance and non-discrimination' (p. 374). I do not read the situation in quite that way. Changes in population

composition are bound to affect attitudes. Censorship laws may not change the attitudes of those who are very prejudiced, but only cause them to sanitize their language so as to avoid prosecution. The main battle is to influence the thought and behaviour of that large section of the population that is neither very prejudiced nor quite free from prejudice. Speech laws need to be complemented by other measures.

"In this connection it is interesting to note that in 1990 a Hate Crime Statistics Act became law in the USA. It is designed to elicit the empirical data necessary to develop effective policies and responses to 'hate crime'. Other countries could well take note of this development, and the proposed general recommendation can be seen as a vehicle for getting them to do so.

"Draft general recommendation

"1. The Committee on the Elimination of Racial Discrimination draws the attention of States parties to the significance of the adjective 'effective' in articles 6 and 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, and to the way in which it should be read by States parties when identifying the most appropriate means for eliminating racial discrimination (in accordance with article 2 [1]), and in the preparation of their periodic reports (in accordance with article 9 [1]).

"2. Although some States have relatively homogenous populations and have experienced no ethnic conflicts, they are required under article 5 to guarantee the right of everyone to equality before the law in respect of a wide range of rights. In these States appropriate means may not entail extensive legislation but protections should be in place in the event of racial discrimination occurring as a result of visits to the State by persons from other regions and there should be grounds for regarding these protections as effective.

"3. In the experience of the Committee on the Elimination of Racial Discrimination, even in those States which have found it appropriate to introduce far-reaching legal protections and remedies, their effectiveness remains limited. When reporting on action in respect of article 6, States parties should therefore attempt to assess the effectiveness of the protections and remedies provided, if possible by empirical investigation but otherwise by consultation with representatives of those groups for whom the protections are intended. Consideration should be given to factors influencing access to the tribunals and institutions which assure protection and remedies. Access may be limited by ignorance of the remedies available or by doubts concerning their costs or effectiveness. It is often difficult for an aggrieved person to prove that a distinction, exclusion, restriction or preference has been based on race, so special consideration may need to be given if the right of the parties to equality before the law is to be guaranteed in accordance with article 5.

> "4. In the experience of the Committee on the Elimination of Racial Discrimination, measures in the fields of teaching, education, culture and information to combat the prejudices which lead to racial discrimination vary in their effectiveness according to the historical circumstances of States parties and according to the kinds of measures adopted. When reporting on action in respect of article 7, States parties should attempt to assess the effectiveness of the measures adopted, if possible by empirical investigation but otherwise by consultation with those most closely involved in teaching, education, culture and information, and with the representatives of those who are the objects of the prejudices which lead to racial discrimination."

62. The CHAIRMAN suggested that the Committee should postpone its consideration of the draft recommendation on effectiveness so that it would have time to look at it more carefully.

63. It was so decided.

64. The CHAIRMAN informed the Committee that the Czech Republic had acceded to the Convention on 22 February 1993.

The meeting rose at 5.50 p.m.

CERD/C/SR.970
21 July 1993

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 970th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 10 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)*

Eighth periodic report of the Sudan (CERD/C/222/Add.1) (continued)*

1. The CHAIRMAN invited the delegation of the Sudan to reply to the questions asked by members of the Committee.

2. Mr. EL-MUFTI (Sudan) welcomed the questions and observations of members. They would help the Government, which was resolutely determined to give the highest importance to human rights, to improve its implementation of the Convention. It would also provide an opportunity to make good the gaps in the report and correct some misperceptions.

3. He noted that most of the information given by Ms. Sadiq Ali came from persons who had probably never been to the Sudan. To illustrate the current situation, he cited one highly significant fact: among those who had paraded to celebrate the third anniversary of the revolution had been representatives of the Indian community in the Sudan. They had demonstrated their support for the Government, because, as they put it, it respected their freedom, particularly in economic matters and because it had put an end to corruption, theft, aggression and the climate of insecurity.

4. Describing the situation in the Sudan prior to the revolution, he said armed gangs had been pillaging the west of the country. Civil war raged throughout four-fifths of the south. As for the centre, it was in the grip of a drought which compelled hundreds of thousands of persons to flee the region. According to IMF, the growth rate had been negative (-1.3 per cent in 1989). The country's situation had been almost as catastrophic as that of Somalia before the United Nations intervention, and had posed a threat to the stability of the whole region. The revolution had remedied the situation. In the west of the country, all weapons had been confiscated and peace restored, while the Government had brought 80 per cent of the south under its control. The aim was not to subjugate the south, which was just as much a part of the country as the north, but to restore peace. In its first communiqué, the Revolutionary Council had proposed a ceasefire. It had then decreed a general amnesty for the benefit of all those who agreed to lay down their arms.

5. The National Dialogue Conference had formally recognized the legitimate rights of the population of the south. The Government had acknowledged that the south was economically backward in comparison with the north and an agency had been established to promote the development of the south. In the

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* Resumed from the 968th meeting.

political sphere, the Government had set up a federal system of government under which resources and positions of responsibility were to be equally distributed. The Government had also decided that the Shariah would not be applied to the minorities in the south, whose cultures had been recognized.

6. In the economic sphere, the Government estimated that the rate of growth of the national economy, which, according to IMF, had been 9.6 per cent in 1992, should rise to 15 per cent in 1993.

7. With regard to education, he said that there were currently 25,000 students enrolled in universities, as against 5,000 in 1989.

8. Contrary to its predecessor, the Government had decided, not to allow displaced persons to enter the capital, where they would not find housing and would live in insanitary conditions. Out of concern for their dignity it had been decided to provide them with plots, which they would be able to acquire, in the vicinity of the capital. All those measures testified to the value attached by the Government to human liberty and dignity.

9. As far as relations between the executive, legislative and judicial branches were concerned, he said that the judiciary was independent and still governed by a 1986 law. The legislative and the executive branches, had initially both been exercised by the Council of the Revolution. In order to terminate the monopoly of both branches of authority, it had been decided to entrust legislative authority to the Supreme Transition Council, composed of over 300 individuals representing the country's different provinces and population groups. Even though the members were not elected but appointed, the Council, which it should be emphatically stressed was transitional, was none the less a step towards democracy. As for executive authority, which was henceforth separate from legislative authority, it was exercised by ministers.

10. It should be mentioned that local elections had recently been held, in which 1,600 municipal councillors had been elected by some 5,300,000 voters. Those developments all testified to the Government's determination to progress towards democracy.

11. In the document entitled "Overall national strategy", emphasis was placed on all the fundamental rights that should appear in the future constitution. The 1985 Constitution was no longer in force.

12. Turning to the religious issue, he said that as Islam was a revealed religion, it could not be the subject of a political debate. The only body of law in which the Shariah appeared was the 1991 Penal Code, which contained a chapter on the penalties applicable to those who committed violations of the Shariah. All the other chapters of the Penal Code were the same as those of the Penal Code promulgated by the British in 1898. He pointed out that in order to preserve the rights of minorities the chapter in question did not apply to the population of the south or to non-Muslims who lived in the north. For example, a non-Muslim who consumed alcohol could not be penalized, unless, of course, he caused a disturbance.

13. Flogging was indeed a form of punishment. It had not been instituted by the 1991 Muslim Personal Law, but by the Penal Code promulgated by the British in 1898. It was considered to be one of the best forms of punishment, not from a religious angle, but from that of modern criminology.

14. Apostasy was not in itself punishable. Any Muslim could convert to Christianity. Although that might appear to be a new development, it was perfectly verifiable: it was clearly set down in the Penal Code. However, what was punishable was the call to apostasy, which could constitute a threat to peace and public order. Even so, the call to apostasy was not immediately punishable; persons guilty of it were brought before the courts which gave them plenty of time before actually handing down a sentence against them. If they abandoned their call to apostasy, the conviction was immediately quashed.

15. With regard to the war in the south of the country, he said that the Government attached the highest importance to preserving peace, which it was sincerely and resolutely trying to achieve. The rebel movement had realized that and on 23 February 1993 its leader, John Garang, had for the first time since the movement came into being in 1983 consented to sit at the same table as the representative of the Government.

16. All those factors - revolution, religion, war - undoubtedly affected human rights, and the Government by no means denied the violations that had been committed. However, it wished to assert that it was taking every measure necessary to avert any further violations. The recently adopted amendments to the National Security Act were specifically designed to achieve that aim. They were part of the measures taken by the Government to bring about national reform.

17. Resolution 47/142 concerning the situation in the Sudan, adopted by the General Assembly on 18 December 1992 concerned human rights violations prior to the adoption of the amendments in question. In that resolution the General Assembly called upon the Government of the Sudan to ensure a full, thorough and prompt investigation of the killings of Sudanese nationals employees of foreign government relief organizations (operative para. 7) and permit humanitarian assistance to be delivered to the civilian population (operative para. 8). The Government had complied in full with the request of the General Assembly. The Inquiry Commission had been set up on 25 November 1992, although its report was not yet ready. It would be published as soon as it became available. As for humanitarian assistance (food, medicine), the Government had made every effort to supply it to the civilian populations in the south - in the region of Juba in particular - but rebel elements had prevented it from being taken by surface transport (road or sea). As a result the Government of the Sudan had been compelled to transport it by air, i.e. at considerable expense. In July and August 1992 the town of Juba had come under armed attack by the rebels, and the Government armed forces had naturally responded to the attack. The human rights violations committed at the time had to be seen within the context of a very difficult situation. Nevertheless, the Government had accepted its responsibilities and set up an inquiry commission.

18. Returning to the question of humanitarian assistance, he said that according to information provided not by the Government but by the United Nations, the Government had met its commitments in that respect. Following an agreement with the rebels at the beginning of December 1992, under the aegis of the United Nations, the Government had sent 1,300 tons of food and medicine from the town of Kosti in the north of the Sudan to the south, but as soon as they had reached the area under rebel control, the convoys had been attacked. The United Nations was well aware of that, but it did not wish to recognize that the rebels had deliberately prevented the humanitarian aid from reaching its destination. The rebels' aim was to arouse world opinion against the Government, and they were apparently succeeding. It was in the interest of some parties that they should do so.

19. One member of the Committee had referred to the draft resolution on the situation of human rights in the Sudan submitted to the Commission on Human Rights at its current session (E/CN.4/1993/L.32) which was due to be put to a vote. The draft resolution was a typical case of the exploitation of the United Nations for political manipulation. The previous year, the Commission on Human Rights had decided to send an independent expert to the Sudan in order to investigate all aspects of human rights (racial segregation, religious intolerance, arrests, etc.). The Government had accepted that decision and in November 1992 the expert had spent seven days in the Sudan. He had prepared a report which he had submitted to a working group of the Commission. It would have been normal for the Commission to have cognizance of the expert's report and of the recommendations of the working group responsible for examining it. However, certain Western countries, including the United States of America, had opposed that. They had succeeded in having consideration of the report and of the recommendations of the Working Group postponed until draft resolution L.32 had been adopted. After its adoption (secured by intrigue and various forms of pressure), the same Western countries would say that it was not necessary to consider either the independent expert's report or the working group's recommendations as draft resolution L.32 had been adopted.

20. With regard to the allegations of torture and arbitrary trials and arrests, he would abstain from providing any information from the Government and restrict himself to the conclusions of an independent expert appointed by the United Nations, whom he had accompanied during his visit to the Sudan, in his capacity as Secretary-General of the Sudanese Commission on Human Rights. On that occasion, the expert had been able to ascertain that the allegations of torture or arbitrary imprisonment had never been attested. More significant, he had been able to meet a person who, according to Amnesty International and Africa Watch, had allegedly been tortured and had died, a fact he had recorded in his report. He had also noted, with regard to persons who had allegedly been arbitrarily arrested or tried, that the persons in question had either been acquitted or convicted by written sentences of which they had been informed. Moreover, the expert had ascertained that the conditions under which the prisoners were incarcerated were normal since they had access to newspapers, could watch television and received visits from their families.

21. One member of the Committee had mentioned a report on the CNN television channel concerning famine in some regions of the Sudan. The facts reported were true, although the report did not indicate the causes of the famine. As the competent United Nations bodies would be able to testify, the Government was unable to transport food to the regions in question as they were in rebel hands.

22. While he realized perfectly well that some of the observations made were not attributable to the Committee, he wished, in so far as possible, to reply to all the questions asked and was at the Committee's disposal to provide it with any further information. In addition, he cordially invited any members of the Committee who were interested to visit the Sudan to observe the situation on-the-spot.

23. He was not acquainted with Amnesty International's 1993 report, although he had read the report published by the organization on 30 November 1992, in which it was stated that the Government had perpetrated a massacre in Malakal similar to that which had taken place in Juba. The Minister of Justice had visited the scene in the company of high judicial officials to investigate the allegations. Of the 20 persons cited by name by Amnesty International, seven had never been arrested, 12 had indeed been arrested and questioned before being released and one person had been tried by an ordinary court for embezzlement and sentenced to four years' imprisonment. Unfortunately, the Amnesty International report had been distributed to the Commission on Human Rights and publicized throughout the world without the Government being given the possibility to reply to the accusations made in it. Amnesty International had perhaps acted in good faith, but the procedure was nevertheless questionable.

24. In reply to another question, he said that racial and religious discrimination was an offence under Sudanese law, statutory as well as case law. Furthermore, well before independence the international instruments to which the Sudan had acceded had been part of domestic law, over which they took precedence. They were numbered in the order in which they had been ratified and published in the Official Journal.

20. With regard to the number of refugees in the Sudan, United Nations statistics set the figure at 1,100,000 whereas, according to official Sudanese Government statistics, there were 2.5 million. That discrepancy was attributable to the large number of refugees not registered by the United Nations. The fact that many people from countries without a border with the Sudan (Cameroon or Rwanda, for example) had decided to seek refuge in so poor a country as the Sudan was sufficient testimony to the non-discriminatory treatment they found there. If the conflict raging in the Sudan was a tribal or religious one, he asked how it was possible to account for the flow of displaced persons from distant southern regions to the capital.

26. As far as trade union freedoms were concerned, it was true that the Revolution had frozen the activities of political parties and trade unions, although in 1992 a new trade union act, which guaranteed the organization of free elections had been promulgated. When the unions had begun several months

ago to organize the elections, the Government had sent a written invitation to the ILO inviting it to attend the elections. The ILO had turned down the invitation on the grounds that the Government had suspended the activities of trade unions and political parties. In that regard, he insisted that the measures taken against trade unions immediately after the Revolution had been temporary and exceptional and that they had been abrogated by the new act. It was to be hoped that the ILO would be able to observe on the spot that the position of trade unions was now satisfactory.

27. With regard to the percentage of non-Arabs in the armed forces and the proportion of southern and northern Sudanese in them, he assured the Committee that strange as it might seem, there were far more non-Arabs than Arabs in the armed forces. Membership of the popular defence forces did not depend on religious considerations. The forces were not regular forces in the true sense of the word, but training organizations whose purpose was to support the regular forces.

28. On the question of language, Arabic was undoubtedly the language of most Sudanese. However, it was not the official language for that reason, but because it was the language employed by all the 500 tribes in the Sudan. English, which was indeed the language of the elite, had preserved its important position within Sudanese society. Thus, all the laws that had been adopted prior to 1956, when the country had become independent, and which were drafted in English, took up four volumes of the collection of Sudanese laws and were still in force in their original version. In addition, under the 1974 Interpretation of Laws and General Clauses Act, the English version of laws was the authentic version before the Sudanese Courts, despite the existence of an Arabic translation. Allegations of forced Arabization of the country were torn to shreds by the official recognition of an important volume of legal texts in a foreign language.

29. The "national dialogue" referred to by one member of the Committee was a conference which had been held several months after the current Government had come to power; the Government had given considerable weight to its recommendations, particularly those concerning linguistic and religious minorities.

30. Regarding the religious composition of the population of the south of the Sudan, he said that according to statistics that did not come from the Government of the Sudan, 18 per cent of the population were Muslim and 17 per cent Christian in the southern provinces.

31. Mr. Aboul-Nasr, who knew the Sudan well, had rightly drawn attention to an anomaly in paragraph 50 of the report: the second line should not read an "Arab Muslim" but simply a "Muslim".

32. In general terms he recognized that there were a number of mistakes and gaps in the eighth periodic report of the Sudan. That should be put down to the inadequate means available to prepare the report. The Government wished to cooperate with the Committee, although there was a problem of resources. When the Committee's questions were sent to it in writing, it would make every effort to provide detailed replies.

33. The CHAIRMAN thanked the delegation of the Sudan for having explained how its Government implemented the Convention. The explanations provided were a useful complement to the eighth periodic report (CERD/C/222/Add.1). In addition, the representative of the Sudan had announced that his Government would reply to the questions of the Committee as soon as it received them.

34. Ms. SADIQ ALI thanked the representative of the Sudan for his clarifications. However, she would have preferred them to have been included in the eighth periodic report. She thought that it would not be possible for the Sudan to achieve stability until the question of the insurrection in its southern provinces was solved. Unfortunately, that situation had persisted since independence and the various negotiations that had taken place over the years, particularly in Addis Ababa in 1972, but also in Nigeria and in Kenya had still not achieved anything. She requested information on the current likelihood of a peaceful settlement.

35. The representative of the Sudan had declared that the information published by Amnesty International about his country was not accurate. However, in reply it had to be said that the Government had not allowed the organization to visit the area. Access to the southern provinces had also been denied to the press for several months. If, however, the Government wished to move towards democracy, as its representative had stated, that should solve many problems. Lastly, she said that the Commission on Human Rights had just adopted draft resolution E/CN.4/1993/L.32 on the situation of human rights in the Sudan.

36. Mr. de GOUTTES also appreciated the information provided orally, which was a valuable complement to the contents of the eighth periodic report. Nevertheless, he had been disappointed by the attitude of the delegation of the Sudan towards draft resolution E/CN.4/1993/L.32 of the Commission on Human Rights which had just been adopted. He deplored the reference to manipulation in the Commission. In fact, the resolution adopted was based on a series of earlier texts: General Assembly resolution 47/142 and the reports submitted to the Commission at its forty-eighth session by the Special Rapporteurs on the question of torture and on summary or arbitrary executions and at its forty-ninth session by the Special Rapporteur on the question of religious intolerance. Furthermore, the resolution noted a number of positive developments in the situation, in particular the Governments' intention to set up an independent judicial commission. The Commission had however, expressed its deep concern about the grave human rights violations committed in the Sudan and had urged the Government to respect human rights fully and comply with applicable international human rights instruments, in particular the International Convention on the Elimination of All Forms of Racial Discrimination. The Commission had mentioned the rights of members of all religious and ethnic groups, with whose protection the Committee was concerned.

37. He thought that the information provided by the representative of the Sudan was still not sufficient and that it should be supplemented in writing as soon as possible. The Committee should make use of the option available to it to request further information, under article 9, paragraph 1 of the Convention.

38. Mr. YUTZIS said that the presentation by the representative of the Sudan had greatly helped him to understand the difficulties facing the Sudan and the complexity of the situation there. The Sudan was a developing country which undoubtedly faced fundamental problems. In the political sphere, the persistent insurrection created a situation about which the international community expressed its deep concern through the United Nations and governmental and non-governmental bodies. It was apparent from the eighth periodic report and from the oral information provided that politics in the Sudan was still considerably restricted. It had been said that citizens were free to take part in politics, although it was apparent that in fact they had little choice. For his part, he could not accept that fundamental freedoms and rights should be suspended in the name of the revolution, on the pretext of better defending them. The emergency measures adopted in the Sudan could not continue indefinitely. Moreover, the situation of certain minority groups was a source of deep concern and in general the resolution of the serious problems currently facing the Sudan was a matter of deep concern.

39. Nevertheless, the fact that the Sudan had submitted its eighth periodic report as required, and that it had sent a delegation that was prepared to engage in a thorough dialogue with the Committee was a source of satisfaction. The Government should now be asked to take into account the recommendations and resolutions addressed to it, and to do so within a reasonable period.

40. Mr. WOLFRUM also thanked the representative of the Sudan for furnishing important information orally that helped to provide a better understanding of the complex situation in the Sudan. He would have appreciated it if the information had been included in the eighth periodic report. However, he noted that the questions he had put regarding summary executions, arbitrary arrest and ill-treatment of prisoners had still not been answered. It was to be hoped that those questions would be studied by the independent judicial commission which had been set up on 26 November 1992.

41. In addition, it was a matter of satisfaction that the Government had acknowledged the existence of human rights violations in the Sudan and had expressed its intention to pursue a constructive dialogue with the Committee and seriously to study its recommendations. With that prospect in mind, he would like the findings of the independent judicial commission to be communicated to the Committee as rapidly as possible, together with those of other investigative agencies that the Government might set up. He also requested information on the situation of the Nuba mountain people. The Committee could not wait for two years for the information it requested; it should be provided earlier in order to maintain a satisfactory dialogue.

42. Mr. ABOUL-NASR also thanked the representative of the Sudan for the further information he had provided. The delegation had shown honesty and sincerity in acknowledging the existence of serious problems in its country. Those problems should be addressed urgently in order to prevent the situation from deteriorating and transforming the Sudan into a new Somalia.

43. One question in particular was still not clear to him. Mr. El-Mufti had emphasized that acts of racial discrimination were indeed offences under Sudanese legislation and in that connection had referred to two articles of the Penal Code. He asked, however, whether those articles prescribed punishment, and in particular prison sentences.

44. He understood the Government's feeling that it faced a degree of political prejudice in the United Nations. It was true that the General Assembly, the Security Council and the Commission on Human Rights and other bodies chose to reserve special treatment for certain situations, while neglecting others that were worse. However, that should not compromise the dialogue between the Government and the Committee. In that connection he shared Mr. Yutzis' hope that the Committee's recommendations would be seriously studied.

The meeting rose at 1.05 p.m.

CERD/C/SR.971
16 March 1993

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 971st MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 10 March 1993, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

later: Mr. DIACONU

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eighth periodic report of Sudan (CERD/C/222/Add.1) (continued)

1. At the invitation of the Chairman, Mr. El-Mufti (Sudan) took a place at the Committee table.

2. Mr. van BOVEN thanked the delegation of Sudan for its cooperation with the Committee. The representative had admitted that human rights violations did take place in his country and had reiterated the Government's determination to bring them to an end. It would need the Committee's close attention and support in that task. It would be helpful if the Committee could have a copy of the report of the committee of judicial inquiry to which the representative had referred, once it had been published.

3. In his earlier questions to the Sudanese representative, he had referred to a report which had been prepared by a committee of experts of the International Labour Organisation and which alleged that the Government had allowed unofficial militia groups to keep property gained through looting and to hold slaves, whom they sold for between $30 and $60 each. Apparently, the Government of Sudan had not yet commented on that report and he hoped that it would do so soon.

4. He had also commented on the 1989 revolution in Sudan and had understood that the Sudanese representative had considered his comments to have been expressed in unsuitable terms. He had merely intended to stress the fact that, even during a time of revolution, there were certain basic human rights standards which could never be abandoned, such as the right to life and the prohibition of torture. Article 4 of the International Covenant on Civil and Political Rights listed the articles embodying those basic rights which could not be suspended under any circumstances. Even if a State did derogate from some of its obligations under international instruments, it should not take measures which involved discrimination solely on the grounds of race or a number of other criteria (art. 4 (1) of the Covenant). That was an area which indisputably came within the Committee's terms of reference.

5. Mr. EL-MUFTI (Sudan) said that he had not intended to call Mr. Van Boven's comments "unsuitable"; a problem of interpretation must be responsible for the misunderstanding.

6. The Committee had asked about the rebel movements in Sudan. When the present Government had taken power in 1989, there had been only one rebel movement, but it had subsequently split into three rival factions, which squabbled endlessly among themselves. For that reason, it had not yet been possible to bring the Government and the three factions together at the negotiating table. However, the Government was willing to grant some kind of power-sharing arrangement, possibly taking the form of a federal structure.

7. There had been a question about the Government's alleged refusal to allow international organizations to visit the Nuba mountains in the central province of Kordofan. In fact, a representative of the United Nations High Commissioner for Refugees had visited the area to see the situation for himself. The Government had not yet set up a commission to investigate alleged human rights violations in the area, partly because it was waiting to see whether the Commission on Human Rights would appoint a Special Rapporteur on Sudan, with whom the Government wished to cooperate fully.

8. One member had expressed disappointment at the Sudanese delegation's reaction to the Commission on Human Rights draft resolution on the situation in Sudan (E/CN.4/1993/L.32). His delegation had not intended to criticize the system for the monitoring of human rights situations in various countries; he had merely pointed out that, in the case in question, the United Nations was not abiding by the system which it had itself adopted, by refusing to take account of the comments of the Sudanese Government.

9. There had been a question about the Government's commitment to democracy. The Government was fully committed to democracy and considered that nothing justified abuses of the people's fundamental human rights. However, the situation which had prevailed in the country in 1989 could have been resolved only by the intervention of the armed forces; the Government was now moving back towards a democratic system as quickly as possible.

10. Replying to a question about arbitrary arrest and summary executions, he said that the Government had already submitted a great deal of information on that subject to various United Nations bodies. He could, however, cite a number of recent cases. In one case, 24 criminal charges had been lodged against 13 officers of the security forces. One officer had already been tried and sentenced to death in central Sudan; the sentence was awaiting confirmation by the Supreme Court. In western Sudan, four senior army officers and one senior police officer were awaiting trial on charges of carrying out summary executions. He could provide more information about those cases if the Committee wished, but they proved that the Government was taking action to curb human rights abuses.

11. Mr. Aboul-Nasr had asked about the penalties for offences of racial discrimination. Such offences could be punished by imprisonment for up to two years, a fine or both.

12. The human rights commission for which he worked in Sudan had not yet received the 1992 report of the Committee of Experts of the International Labour Organisation containing allegations of slavery in Sudan. When it had received the report, it would respond in detail. The commission had been set up in October 1992 to receive, investigate and reply to comments and allegations on human rights issues from the international community.

13. International standards condemning racial discrimination and torture were fully respected in Sudan. Mr. van Boven had asked about possible conflicts between international standards and Islamic Shariah law in Sudanese legislation: the only possible problem he knew about was the current debate

about the interpretation of the concept of cruel or inhumane punishment, which, it was argued in Sudan, might be understood to exclude punishments specifically laid down by God for Muslims or members of other religions.

14. The CHAIRMAN thanked the Sudanese representative for his answers and said that the Committee had now concluded its consideration of the eighth periodic report. Ms. Sadiq Ali would draw up concluding observations in the light of the debate which had taken place and submit them to the Committee for approval.

15. Mr. El-Mufti (Sudan) withdrew.

16. Mr. Diaconu took the Chair.

Eleventh and twelfth periodic reports of Ecuador (CERD/C/197/Add.9, CERD/C/226/Add.1, HRI/CORE/1/Add.7 and CCPR/C/58/Add.9)

17. At the invitation of the Chairman, Mr. Pinoargote Cevallos (Ecuador) took a place at the Committee table.

18. Mr. PINOARGOTE CEVALLOS (Ecuador), introducing his country's eleventh and twelfth periodic reports (CERD/C/197/Add.9 and CERD/C/226/Add.1) and the background information contained in document HRI/CORE/1/Add.7, said he hoped that the reports would help to answer the questions which had remained outstanding from previous periodic reports. There was no systematic racial discrimination in Ecuador; the inequalities which did exist were the result of the social, economic and structural problems encountered by all developing countries. Ecuadorian society was not perfect, but the Government was aware of the problems and was constantly trying to improve legislation and combat inequality. It would take the advice and comments of the Committee in the best possible spirit.

19. The reports covered issues of particular interest to the Committee, such as the constitutional and legal provisions dealing with racial discrimination, and details of the main indigenous groups, including their relations with the State, land distribution programmes and other special government measures. They also covered equality before the courts, political rights, health services and employment programmes, the remedies available to victims of discrimination, educational and cultural programmes and statistics from the latest population census. The National Development Plan, as referred to in paragraph 2 of the twelfth report, was a particularly important instrument, since more emphasis was placed on planning now than in the past. It came under the authority of the Vice-President and was authorized by presidential decree. It was binding on the public sector.

20. One of the main obstacles to the implementation of the National Development Plan was the influence of external factors on the economy.

10 years had received external support only from the International Fund for Agricultural Development (IFAD); other potential donors had refused to contribute funds unless Ecuador introduced structural reforms and other harsh measures which would have been disastrous for the poorest sectors. In such a situation, the pace of development was bound to be slow.

21. The Ecuadorian Government was not trying to shirk its responsibilities; he was merely pointing out some of the difficulties which the country faced despite its real commitment to human rights. Ecuador was one of the few countries which was up to date in the submission of its reports to the Committee and he looked forward to hearing the members' comments and questions.

22. Mr. WOLFRUM, country rapporteur, congratulated the representative of Ecuador on the excellent eleventh and twelfth reports, both of which complied with the Committee's guidelines. In assessing them, he would refer to the equally excellent third periodic report of Ecuador to the Human Rights Committee (CCPR/C/58/Add.9).

23. The reports emphasized that Ecuador was a multi-ethnic and multi-cultural society and that the State was endeavouring, through the National Development Plan, to promote the groups and cultures which were contributing to the creation of a national identity. The reports listed a number of legal and constitutional provisions designed to prohibit racial discrimination and to ensure that human rights and fundamental freedoms were promoted and protected in all spheres of national life.

24. Statistics on the demographic composition of Ecuador were given in annex 1 to the eleventh report. The most recent census had been conducted in November 1990: as he understood it, that census gave no information on the ethnic composition of the country and, to that extent, fell short of the Committee's expectations.

25. Concerning article 2 of the Convention, reference was made to the penalties provided in the Penal Code for participating in organizations or activities which promoted or incited racial discrimination, but nothing was said about actual practice in that regard. Had there been any court ruling on the basis of the provisions in question? The representative of Ecuador had suggested that in fact no racial discrimination existed in the country, but he himself doubted whether that was true of any country in the world.

26. Paragraph 14 of the twelfth report stated that the National Development Plan aimed to foster the participation of indigenous populations in political life. He would like to know what percentage of members of Parliament were in fact members of indigenous communities. The report further stated that one of the objectives of the Plan was to "overcome any remaining discrimination against popular cultural characteristics that contributed to the achievement

27. According to Ecuador's third periodic report to the Human Rights Committee, indigenous languages were the main languages of instruction in schools in areas where the population was predominantly indigenous. He would appreciate further information on that point. What was meant by "predominantly" - 30, 40, or 50 per cent? It would be interesting to know to what extent children in such areas also received instruction in Spanish, since they would otherwise have difficulty in integrating into the social and economic life of Ecuador.

28. While the objectives of the National Plan seemed to comply fully with article 2 (2) of the Convention, he would like to know whether the words "indigenous nationalities" covered only those groups mentioned in annex 1 to the eleventh report or whether other groups existed. How was an individual identified as belonging to a given minority? In paragraph 13 of the eleventh report, what was meant by the words "popular cultural characteristics"?

29. According to paragraph 15 of the eleventh report, the Government had already begun to legalize the title of 70 indigenous communities to land in the Amazonian and coastal areas and more than 1 million hectares were to be distributed among 3,159 families. The report to the Human Rights Committee stated that, due to the fear that the indigenous communities in the Amazonian region might be adversely affected as a result of the ecological deterioration of the area, mechanisms had been set up to find production and development alternatives. That statement called for some further explanation.

30. According to paragraph 21 of the eleventh report, the Quechua community had numerous organizations to protect its interests: who had set up those organizations, what was their relationship to the Quechua communities and how were those communities organized? Was the title to land held by communities, families or individuals? The same questions were applicable to the other ethnic groups referred to in the report. It was stated that the Quechua now lived in areas formerly inhabited by others: did they have a friendly relationship with other ethnic communities? It was also stated that Awá land had been recognized in the form of an "ethnobiological reserve": the concept of such a reserve would seem to be unique among Latin American countries and he would appreciate more information on the point.

31. Paragraph 14 of the eleventh report stated that plans of action regarding ethnic groups were designed to "enhance the national identity", whereas article 2 (2) of the Convention envisaged protection of such groups for their own sake. That might not necessary be a contradiction, but there did seem to be a discrepancy between the two approaches.

32. Paragraph 43 of the twelfth report stated that contracts for economic projects, notably for the exploration and development of hydrocarbons, ensured respect for the cultural values of native populations. How was such respect guaranteed in practice?

land. The Committee would be interested to hear more about those incidents and about the action taken by the Government. Again, in April 1992, 4,000 Indians from the Quechua, Huwia, Achnar and Zaparo communities in the province of Pastaza had demanded that 2 million hectares of land in the Amazon region should be ceded to the 20,000 Indians living in the area and had called for changes in the Constitution. The Government had decided to grant them title to 1 million hectares; was that in addition to the grant referred to in paragraph 15 of the eleventh report? It would seem that that grant did not include a title to mineral resources, including hydrocarbons. To what extent did the indigenous communities profit from the exploitation of hydrocarbons in the Amazon region and, without rights to profit from economic development, what benefits did they derive from their land?

34. While article 14 of the Constitution of Ecuador guaranteed aliens the same rights as Ecuadorians, he had some misgivings about article 9 of the Constitution, which appeared to differentiate between Spaniards and Ibero-Americans, on the one hand, and all other aliens, on the other. He would appreciate clarification on that point. The Government should also provide information about the number of aliens living in Ecuador and how the privileges accorded them were guaranteed.

35. With regard to the implementation of article 3 of the Convention, the reports stressed that Ecuador had no diplomatic, consular or economic relations with South Africa. Concerning article 4 of the Convention, it was stated that the Ecuadorian legal system gave precedence first to the Constitution, then to legislation deriving from international instruments and lastly to internal laws. It would be of interest to the Committee to know whether that order of precedence had any impact on court rulings, and whether a court had declared any internal law void because it was not in conformity with international law. In the report to the Human Rights Committee, it was stated that amendments to the Penal Code were under consideration; he would like to know what kind of amendments were envisaged.

36. The Constitution of Ecuador guaranteed to all those subject to its jurisdiction the free and effective exercise and enjoyment of all the rights enunciated in declarations, covenants, agreements and other international instruments to which it was a party - a very far-reaching provision. While such constitutional guarantees were important, it was equally important for the Committee to know how they were implemented in practice and, on that point, none of the reports gave much information. It would seem, for example, that, despite the protection they enjoyed, indigenous communities had been expelled from their land in the province of Imambura and it was alleged that paramilitary groups in the area were operating against those communities with the acquiescence of the Government. Could the representative of Ecuador comment on that allegation?

37. In the context of article 5 of the Convention, article 19 of the Constitution of Ecuador guaranteed equality before the law and prohibited

of instituting proceedings against those found guilty of such violations; it would be helpful if the Government could, in its next report, provide information on when that Commission had been established and on its current activities.

38. He had been surprised to note that, where the right to vote was concerned, an exception was made for illiterates: when asked to comment on that point in the Human Rights Committee, the representative of Ecuador had said that liberal elements in society had opposed giving illiterates the vote because they tended to come from indigenous communities and would thus be easily manipulated. That statement called for some explanation. One of the requirements of the Political Parties Act was that, in order to be recognized, parties had to have a nationwide organization and the number of members specified by law. Did that exclude political parties restricted to certain districts and thus any parties that might be formed by indigenous groups?

39. In connection with article 6 of the Convention, he was interested to note from the report to the Human Rights Committee that the very few cases involving missing persons or improper treatment of detainees had been investigated and punished. However, he would appreciate more information, in particular on the role of Ecuador's Ad Hoc Commission on Human Rights in that regard. In February 1990, the Government had set up an international ad hoc committee to investigate a still unsolved case involving the disappearance of two persons: following that committee's report, the Criminal Investigation Service had been dismantled and a number of police officers arrested. There, too, the Committee would welcome further details. It had been alleged that torture was still practised in prisons in Ecuador and, in particular, that an indigenous community leader, José María Cabascango, had suffered ill-treatment. Could the representative comment on that allegation?

40. Finally, where article 7 of the Constitution was concerned, the reports confined themselves to general references to the Government's plans of action. He would welcome more detailed information.

41. Mr. FERRERO COSTA, referring to the core document forming an integral part of the report of Ecuador (HRI/CORE/1/Add.7), said that he wished to register a formal protest with regard to paragraph 9 of that document, which stated: "In 1941 Ecuador was attacked by Peru and as a result lost almost half its territory. It was in those circumstances that the Rio de Janeiro Protocol was signed on 29 January 1942."

42. In his capacity both as an independent expert and as a professor of international law of Peruvian nationality, he wished to state that Ecuador had not been attacked by Peru in 1941 and had not lost half its territory. On the contrary, the war of 1941 had been waged solely in order to enable Peru to retain a territory to which it had full legal title and of which it had until then enjoyed uninterrupted possession. The Rio de Janeiro Protocol of 1942 was an entirely valid treaty, under which the borders between the two

43. His statement was made purely for purposes of clarification and he had no wish to engage in a debate with the representative of Ecuador, since the matter was not within the Committee's competence or indeed within that of any United Nations human rights bodies.

44. Mr. DE GOUTTES congratulated the delegation of Ecuador on the quality of its twelfth periodic report and the interesting details it contained, particularly on indigenous communities.

45. Despite the Government's efforts to protect those communities and to give them land, the problem of uprisings and the violent action taken against them by certain landowners could not be ignored. In its 1992 report, Amnesty International had stated that land-related conflicts had involved violent clashes between indigenous communities and paramilitary groups acting on behalf of landowners. The report also claimed that, in April 1992, the Ministry of the Interior had stated that the Government planned to investigate acts by paramilitary groups, which were accused of operating illegally. He wished to know how far the inquiry had gone and what measures had been taken by the Government to provide better protection for indigenous populations against such intimidation and coercion.

46. According to paragraph 59 of the twelfth report, article 48 of the Constitution stated that property constituted a right recognized and guaranteed by the State for the organization of its economy as long as it fulfilled its social function. That social function should have the result of increasing and distributing income in such a way as to enable the population as a whole to share the benefits of wealth and development. He would appreciate further details on the social function of property and, in particular, on the extent to which article 48 of the Constitution applied to large landowners.

47. In connection with article 6 of the Convention, article 19 (j) of the Constitution, as referred to in paragraph 70 of the twelfth report, provided that any person who considered that he had been illegally deprived of his freedom might avail himself of the remedy of habeas corpus before the Mayor or President of the Council, who could order the person's immediate release were there enough guarantees of the impartiality and independence of elected or administrative authorities for them to be able to decide whether or not a person should be released? Would it not be better for an application for release to be submitted to a real judge or judicial body? He would have liked to have some statistical data on any remedies available in the courts for acts of racism. Information on sentences handed down in connection with such acts and on whether complaints about such acts had been brought before the Inter-American Commission on Human Rights would be appreciated.

48. Mr. ABOUL-NASR welcomed the detailed information provided in Ecuador's reports and in its earlier reports and, in particular, the statement by the representative of Ecuador that no country could claim to be perfect in the field of human rights.

49. With reference to the indigenous uprisings in 1990 and the fruitful dialogue subsequently established with the leaders of the indigenous communities, he asked what demands those groups had made during that dialogue, and, if they had related to land, how much was involved? What had they been given as a result of the dialogue, what were they likely to get in future and which of their demands would be impossible to meet?

50. Mr. LECHUGA HEVIA asked whether, when land was given to indigenous peoples, technical assistance, loans, tools and any other infrastructure were also given. Without such additional assistance, the granting of land was impractical and would encourage attacks by larger landowners; adequate Government protection was therefore essential to ensure that the indigenous populations were able to keep their land.

51. Paragraph 24 of the twelfth report stated that the normal development of the Cofánes' cultural activities had been hampered by the fact that their communes were split up by land settlements. He asked what cultural activities had been hampered and whether the problem had been solved.

52. Mr. BANTON congratulated the Government of Ecuador on the timely submission of its reports and its commitment to the achievement of the objectives of the Convention.

53. The frequent references in the reports to conflicts between individuals and organizations representing indigenous peoples, on the one hand, and colonists and agents of big companies, on the other, gave rise to doubts about the authorities' ability to settle those conflicts and protect the protesters' rights. On 20 November 1986, for example, the Puyo centre of the Confederation of Indigenous Nationalities of Ecuadorian Amazon (CONFENAIE) had been burned by local people hostile to them. In addition, problems in the coastal region were said to derive from African palm exploitation, which had led to pollution and the introduction of new diseases.

54. Paragraphs 43 to 45 of the eleventh report referred to the laws governing prospecting, exploration and exploitation of natural resources in new areas, but said nothing about how those laws were being implemented. He therefore asked what role indigenous organizations could play in seeing that the laws were observed, whether they were consulted about the terms on which permission was given to applicants and what arrangements had been made for the payment of compensation to persons whose livelihood was jeopardized by new industries.

55. In paragraphs 22 to 26 of the eleventh report, it was stated that, in January 1988, a group of Cofánes had blocked a road being built by Texaco in order to present their demands for compensation, but had received no reply. In 1987 several Amazon leaders had been imprisoned and indigenous leaders now considered it dangerous to be conspicuous. Similar explorations also affected the Siona and Secoya, referred to in paragraphs 27 and 28 of the eleventh report.

56. With regard to the reference in paragraph 49 of the twelfth report to the new human settlements in the Amazonian region, he asked which group was

That paragraph also referred to the Community Development Fund which had been set up to meet the needs of those settlements, but he would like information on the wants of the groups living in that region, which might be totally different from what some official body had decided their needs were. He also asked for further details about any consultations that might have been held on the possibilities of meeting those wants and, in particular, on compensation.

57. Paragraphs 29 to 33 of the eleventh report referred to the Government's recognition of the land rights of the Huaorani. It had been claimed that the Huaoranis themselves had demarcated their land with the assistance of CONFENIAE, but neither that body nor the Confederation of Indigenous Nationalities of Ecuador (CONAIE) had been invited to the ceremony in which the new land titles had been handed over by the President of Ecuador. In 1990, the Government had opened up 1.4 million hectares of the Amazon region to oil prospecting. That area included the National Yasuni Park, which UNESCO had declared a "reserve zone for the biosphere". CONFENAIE had apparently warned oil companies to consult it before starting exploration and such reports suggested that the Government might fail to appreciate the value of indigenous organizations and was perhaps too easily irritated by the way in which they presented their case.

58. It had also been reported that, in early 1989, there had been a Federation of Shuar-Achuar Centres, as referred to in paragraphs 34 to 37 of the eleventh report, but the Government had established an alternative federation in Zamora. He wished to know whether that had had something to do with the division between the Amazonian and Coastal regions. In view of the reference to superior "organizational capacity" in paragraph 34, he asked what the objection had been to the previous Federation. Did the Government take a different view than the regional directors of the Ecuadorian Institute for Agrarian Reform and Colonization (IERAC) about the buying and selling of communal lands, which appeared to be at the heart of the dispute?

59. It had been claimed that, in June 1990, Indian groups from eight Sierra provinces between Imambura and Canar had participated in what had been described as the "first uprising of indigenous peoples". He was surprised that neither of the reports had mentioned that uprising.

60. On 14 December 1990, a delegation of indigenous peoples from Ecuador had requested the European Community to restrain its member States from resource extraction in indigenous territories. CONFENAIE had described the contamination of water supplies and the introduction of malaria and poliomyelitis that had resulted from such extraction. The serious economic problems thus created might be expected to give rise to ethnic tensions.

61. In December 1990, indigenous organizations had announced that they were unwilling to continue their dialogue with the Government because there had been no action on the 16 demands they had submitted earlier. One of those demands had been that Quechua should be recognized as an official language.

62. The Summer Institute of Linguistics had apparently been required to cease its operations in Ecuador in 1981, but there were fears that it might be allowed to return. It appeared from reports that great vigilance was needed with regard to that Institute and he requested more up-to-date information on any changes that had taken place in the 1981 policy.

63. The Human Rights Committee had requested information on the protection of rights under articles 25 and 27 of the International Covenant on Civil and Political Rights. He hoped that the Committee on the Elimination of Racial Discrimination would be able to benefit from any information made available.

64. Referring to article 6 of the Convention, he said that remedies on paper might be effective if a complainant had a lawyer and had instituted proceedings, but he wondered what criteria existed for effectiveness in dealing with the circumstances which gave rise to complaints, what action was available to persons who could not afford to hire a lawyer, and what grounds the Government had for thinking that those remedies were effective.

65. In connection with paragraphs 14 and 15 of the twelfth report, he drew attention to article 2 (1) of the Convention, in which States undertook to pursue a policy of eliminating racial discrimination. Although policies would vary in relation to different situations in different countries, they might be expected to have some common features. He asked whether the representative of Ecuador would agree that, as minimum conditions, a State's policy should be written; brought to the attention of those for whom its protection was intended; made known to those responsible for its implementation, and should be reviewed periodically in the light of experience and changed as necessary. How far was Ecuador able to meet those minimum conditions?

66. According to paragraph 14 of the eleventh report, Ecuador's first policy objective was to strengthen the country's national identity. The second was to ensure recognition of its multi-ethnic and multi-cultural character. It would be useful if Ecuador's next report could explain what was meant by "multi-cultural" in that particular context. He also wished to know what was meant by the term "integrated management" in paragraph 15 (d) and whether it was similar to Colombia's policy of self-administration in what were probably similar territories.

67. It was his understanding, although there was scant information on the subject in the report, that many persons of Indian origin had moved to cities and would not benefit from the kinds of programmes which had been established for indigenous areas. The Government might therefore have to adopt a policy for eliminating any discrimination which such persons might experience. Such discrimination might result from a mixture of ethnic and class factors and would give rise to practices which the Committee would regard as being covered by the definition of racial discrimination contained in the Convention.

68. He requested further information on University students of Indian origin, whether they wore Indian dress and formed groups to discuss the indigenous

69. Ms. SADIQ ALI asked whether the revision of the Constitution and the Penal Code had been completed.

70. The Pastaza Indigenous People's Organization was calling on the Government of Ecuador to amend article 1 of the Constitution to read: "Ecuador is a plurinational, sovereign, independent, democratic and unified State which recognizes, protects and respects cultural diversity". Since most Latin American countries had either reformed or were in the process of reforming their Constitutions to recognize and protect the rights of indigenous peoples and since such peoples accounted for nearly 50 per cent of the total Latin American population, she asked whether Ecuador was also moving in that direction and how indigenous people were represented in local bodies and in Parliament.

71. It would be appreciated if future demographic data could be included in the body of the report instead of being annexed separately.

72. She also requested further clarification of the reference to "indigenous languages" in paragraph 16 of the core document.

73. Although a great deal of information had been provided on constitutional guarantees, there was little information to help the Committee understand the impact of socio-economic policies on the weaker sectors of the population, especially indigenous peoples and blacks who lived in rural areas and who numbered some 5 million. Social indicators would help to show that the status of those peoples had improved, particularly as far as the matters dealt with in paragraphs 57 to 63 of the eleventh report were concerned. She asked for details of the rural education system and how it compared in terms of the funds allocated for white or white-mestizo students from the middle and upper classes. Did the Government continue to provide large subsidies for State universities at the expense of primary education and had the budget for the bilingual education system for indigenous peoples been significantly reduced in 1991?

74. Reference had already been made to the nationwide protest demonstrations staged by the indigenous populations in June 1990 and the 16-point manifesto submitted to the Government demanding additional land and other socio-economic programmes, as well as to the demand made in April 1991 for the legalization of traditional indigenous territories. She wished to know which those traditional territories were and what the result of those negotiations had been.

75. In April 1990, more than 200 persons belonging to Ecuadorian ecological groups had protested against the establishment of a new international oil location in the Amazon region inhabited by the Shuar community. Since 1970, when Ecuador had first started to exploit its oil resources, over 12 million acres of Amazon rain forest had been turned over to transnational oil corporations and some 400,000 barrels of crude oil were reported to have

order to protect themselves physically and culturally, many indigenous peoples were said to be moving deeper into the jungle and some were reported to be moving to neighbouring Peru. Nothing had been said in Ecuador's reports about the health problems of the indigenous peoples. Was Ecuador moving ahead with international oil exploration?

76. In September 1991, it had been reported that a new assembly of the Confederation of Indigenous Nationalities of Ecuador had decided to lay the foundations for the Constitution of the "Indian Parliament" and for improved discussions with the Government. That Confederation had also announced that it would not be taking part in the 1992 presidential elections. That showed just how alienated and dissatisfied the indigenous peoples were. She asked whether amnesty had been granted to the 1,000 indigenous leaders who had been imprisoned and whether Ecuador had ratified ILO Convention No. 169 on Indigenous and Tribal Peoples.

77. Mr. SONG Shuhua said that the twelfth report was on the whole a good one and richer in detail than Ecuador's eleventh report.

78. In order for the Committee to evaluate more fully the health and living conditions of indigenous peoples, it needed specific data on the birth, death and life expectancy rates of indigenous populations as compared with the population as a whole.

79. One of the strengths of the twelfth report was its detailed explanation of the Ecuadorian legal structure and, in particular, the way in which constitutional provisions had been given expression in law. Of particular relevance to the Committee was the section of the Ecuadorian Penal Code concerning offences relating to racial discrimination. At the same time, the picture provided in the report was one-dimensional: there were not enough concrete examples of exactly how victims of racial discrimination were protected by the legal system.

80. The report placed considerable emphasis on the exploitation of natural resources and environmental protection. While he appreciated the activities and programmes implemented in that field, he would like to have more detailed information on their effect on the cultural and social life of the indigenous populations, especially those living in the Amazon region. Such programmes did not appear to be of direct benefit to the populations whose lands were being used and no mention of their views on the subject had been included in the report.

81. Indigenous peoples were the most vulnerable population group in the country. He wished to know what remedies were available if previously allocated lands were repossessed at a later point.

82. Information would be welcome on any bilingual education systems for indigenous populations.

Republic and at least one non-governmental organization dealing specifically with indigenous affairs, the Confederation of Indigenous Nationalities of Ecuador.

84. The twelfth report reproduced some of the material already provided in the core document. However, since the twelfth report might well be distributed externally without the core document, it was understandable that it should repeat certain basic information.

85. It was always useful for the Committee to consult the proceedings of other treaty bodies. A good example was the consideration by the Human Rights Committee of reports of States parties; questions raised during its discussions were frequently relevant to the work of the Committee on the Elimination of All Forms of Racial Discrimination.

86. Ecuador's demographic structure made the issue of indigenous peoples a clear priority. In that connection, he wished to know whether and to what extent indigenous communities were involved in decision-making on questions of direct concern to them, such as land allocation and delimitation. It was in the interest of democracy that the peoples concerned should be consulted on such matters. He also wished to know whether the indigenous communities were self-governing and autonomous: did they have their own leaders? Were they represented at the national level?

87. He was grateful to the Government of Ecuador for stressing ecological development, which was a matter of great importance to indigenous peoples. Paragraphs 41 to 50 of the twelfth report provided valuable information on that topic, including the Government's decision to declare the 1990s as the Decade of Ecological Development and details on a number of environmental impact and assessment studies. He hoped that Ecuador would keep the Committee informed of the outcome of its programmes and studies. He also stressed the importance of proper monitoring by the State of environmental activities. Paragraph 45 referred to the Environmental Regulations issued by the National Environmental Department. Did violations of those regulations give rise to any sort of civil liability or criminal responsibility?

88. It would be useful for the Committee to have more detailed information on actual State practice in cases of racial discrimination, particularly cases covered by article 4 of the Convention. He noted with appreciation that Ecuador had made a declaration under article 14, although the Committee had thus far not received any communications concerning it. The Ecuadorian Human Rights had prepared a human rights manual; he wondered whether that manual included any information on the role of the Committee and, in particular, the remedy provided for in article 14.

89. Mr. YUTZIS said that the way in which the Ecuadorian Government dealt with the social and organizational processes of the indigenous peoples was crucial to their well-being. It would thus be useful for the Committee to have specific information on social and organizational development in

90. Paragraphs 29 to 33 of the twelfth report provided basic information on the indigenous community of the Huaorani people. The first allocation of land to the Huaoranis had been made in April 1988 and the recognition of title had taken place two years later. In January 1991, a meeting concerning the topographic delimitation of Huaorani territories had been held between the Ecuadorian Institute for Agrarian Reform and Land Settlement (IERAC), the Organization of the Huaorani Nationality of the Ecuadorian Amazon (ONHAE), the Centre for Information on Tropical Forests (RIC) and Petroecuador. That meeting had also discussed support for the social and organizational process of the Huaorani people and, in that connection, he would appreciate more information on the practical implications for daily life. Past experience had shown that agrarian reform and land settlement could give rise to conflicts of interest. The Committee therefore wanted to keep a close watch on the outcome of those negotiations and any progress made.

91. Paragraph 49 of the twelfth report, dealing with the Tsáchila peoples pointed out that the new human settlements in the Amazonian region of Ecuador had given rise to a number of demands and problems, including those concerning relations between the new settlers and the indigenous populations and the impact of hydrocarbon activities. The issues raised in that paragraph were disturbing. The report was limited to stating that Petroecuador had made a series of contributions to community projects, including the Community Development Fund, which was designed to meet the needs of human settlements, both of indigenous peoples and others. Yet, the new human settlements themselves appeared to be giving rise to tensions and that was not clearly explained in the report. He would appreciate more detailed information on how that problem was being handled.

92. Land allocations had been made to the Cofánes peoples in 1978. More details on that process would also be welcome.

93. Mr. GARVALOV said that the twelfth report was well prepared; in that connection, he noted that, the better the report, the closer scrutiny it would receive from the Committee.

94. By frankly acknowledging that problems relating to indigenous groups did exist, the report raised a number of issues and, in that connection, he asked whether the term "indigenous groups", encompassed all the national minorities in the country.

95. He also wished to know whether, in its attempts to combat racial discrimination against indigenous peoples, the Ecuadorian Government was trying to provide those peoples with administrative autonomy on the basis of ethnic origin and whether, in addition to the rights provided for in articles 19, 32 and 33 of the Constitution of Ecuador, indigenous peoples were specifically entitled to the right to form political parties or associations based on ethnic origin.

96. Article 19 of the Constitution provided for the right to freedom of opinion and to expression of thought, as well as freedom of conscience and religion. In contrast, article 5 (d) (vii) of the Convention provided for the right to freedom of thought, conscience and religion. It appeared that, in

Ecuador, expression of thought was linked to freedom of opinion, which was related more to political matters than to the expression of religious or other beliefs.

97. What was the actual scope of the set of civil rights ensured to indigenous populations? Article 18 of the International Covenant on Civil and Political Rights provided for the right to freedom of thought, conscience and religion. Article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted by the General Assembly in 1981, provided that "Everyone shall have the right to freedom of thought, conscience and religion" and that "This right shall include freedom to have a religion or whatever belief of his choice". Did the indigenous peoples of Ecuador have the right to the belief of their choice or were they restricted under the Constitution to freedom of conscience and religion?

The meeting rose at 6 p.m.

CERD/C/SR.972
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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 972nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 March 1993, at 10 a.m.

Chairman: Mr. DIACONU

later: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eleventh and twelfth periodic reports of Ecuador (CERD/C/197/Add.9, CERD/C/226/Add.1 and HRI/CORE/1/Add.7) (continued)

1. The CHAIRMAN invited the delegation of Ecuador to answer the questions the members of the Committee had asked at the preceding meeting.

2. Mr. PINOARGOTE CEVALLOS (Ecuador) said that his delegation fully and wholeheartedly endorsed the text of paragraph 9 of document HRI/CORE/1/Add.7, to which Mr. Ferrero Costa had referred and which reflected the Ecuadorian Government's official position. The question was currently the subject of discussion at the highest level between the Governments of Ecuador and Peru. The two Governments maintained excellent relations, which, he hoped, would endure. A few weeks previously, he had asked his Government for additional information which he had, unfortunately, not yet received. In his view, the accuracy of a report was an essential quality. As far as human rights were concerned, it was too frequently the case that general statements were made, but what had to be seen was what was actually happening in terms of legislative measures and in practice. He assured the Committee that he would urge his Government to include specific answers to the questions asked at the current session in its next report. For the time being, he would try to answer some of those questions.

3. As publisher of his country's biggest national daily, he had played a part in disseminating information on the proposed constitutional reform, which had culminated in December. The reform related exclusively to the judiciary, as all sectors of society had been clamouring for change in the administration of justice. One of the elements of the proposed reform had been the establishment of the post of ombudsman but this had not been accepted because the main thrust of the reform was to simplify formalities and most legislators had felt that an ombudsman, or Procurator for Human Rights, would add to the existing bureaucracy and that the State Procurator General was in any case still responsible, among his various functions, for dealing with human rights matters. The constitutional reform process had at all events served to bring the idea of a special Procurator for Human Rights into the national debate, apart from restructuring the administration of justice. The reform process would now continue with the amendments that had to be incorporated in the relevant legislation.

4. With regard to the representation of indigenous peoples, the 1945 Constitution had allowed them to have a representative in Congress, like certain professions. That system had not worked well and it had been abandoned. The seventeenth Constitution would not provide for representation of that kind: all representatives would continue to be elected by the people,

without any consideration as to culture or race. The question of indigenous peoples did not arise in that way in Ecuador. The country did not have any practices of racial discrimination similar to apartheid. Differences were, rather, economic and there were few indigenous persons among the wealthy.

5. Referring to the indigenous uprisings that had taken place in 1990, he said that the situation since then had been characterized by an ongoing dialogue between the State and indigenous communities, which had submitted a list of 16 grievances. One basic point was the allocation to the indigenous communities not only of land, but also of the means of working it. For the time being, the dialogue was keeping the peace, since there had been no more uprisings, but the problems that arose dated back several centuries and the solution to them would take a long time.

6. In reply to a question concerning the treatment of court cases in his country, he gave a personal example. About one year previously, when he had been the editor of the largest newspaper in the country, he had been the victim of an attack. The police had done its work well and he had had one of the best lawyers in the country, who had been hired by his newspaper. His case, which had been conducted in very favourable conditions, had, however, still not been decided. That example proved that indigenous peoples and other underprivileged categories were not the only victims of slowness in the administration of justice. The case of the Restrepo brothers was well under way, but still going on. It was very helpful if the Committee requested information on the progress of such cases, for that created outside pressure that could speed up their settlement.

7. In connection with the exploitation of resources on land belonging to indigenous peoples, he said that the President of the Republic was personally studying the effects of oil exploration in the Amazon on the environment and on indigenous peoples and was trying to guarantee the protection of the environment by modern methods. Of course, Ecuador, a debt-ridden country which did not receive enough support from multilateral financing institutions, had to exploit its oil in order to have enough money for programmes for the benefit of the poor. Such exploitation could, however, take place at the same time as protection of the environment and the interests of indigenous peoples. According to Ecuadorian legislation, the State owned the subsoil, but had to exploit its resources by providing appropriate compensation for indigenous communities, especially the Huaoranis, a population which lived in the Stone Age and was not at all integrated in western civilization, like the Yanomamis in Brazil, but with fewer members: 2,715 persons, as against 20,000.

8. He assured the members of the Committee that he would recommend that his Government should communicate the information requested and thanked them for the dynamic interest they showed in his country. Although some information might still be missing, it should not be concluded that there was any lack of willingness on Ecuador's part as far as human rights were concerned.

9. Mr. van BOVEN welcomed the fact that the representative of Ecuador had announced that additional information would be included in his country's next report. He thanked him for his statements and for his country's willingness to engage in a dialogue.

10. Mr. WOLFRUM said that he agreed with Mr. van Boven's comments. He had noted that the representative of Ecuador had stated that there was no racial discrimination in his country, for the use of beaches for example. That was certainly true, but attention must be drawn to more subtle forms of discrimination. For instance, if a particular community depended for its survival on a sound environment, it had to be protected against the deterioration of that environment by forestry, mining and other activities. If one community was thus affected more than other segments of the population, it had to be considered that some form of racial discrimination existed.

11. Mr. YUTZIS said that he shared Mr. Wolfrum's concern. As to the statement by the representative of Ecuador that there was no discrimination in his country, he assured him that the Committee was not thinking of systematic discrimination, but of more subtle forms. Over the years, the reports of Latin American countries which were States parties to the Convention had shown that discrimination in those countries was not openly racial, but did have an economic basis. What was involved was thus a class system in which the rationalization of the economy affected the indigenous communities most.

12. Mr. ABOUL-NASR said that any development project, whether for oil exploration or the construction of a dam, had adverse consequences for some persons. In Egypt, for example, the construction of the Aswan Dam had required the displacement of the Nubian population, which had been living for thousands of years on land that was now under water. That population had been resettled elsewhere. Could one speak of racial discrimination in such a case? He did not think so. He also did not think that the protection of the environment, to which reference was increasingly being made, had anything to do with racial discrimination, unless, of course, nothing was done for indigenous peoples whose environment was altered.

13. Mr. RECHETOV commended the Ecuadorian Government on the efforts it was making to protect human rights and create a society in which the traditions and cultures of the various components of the population would be respected.

14. In the case of major construction work, account should be taken not only of the significance it would have for the country as a whole, but also of the effects it might have on the populations directly concerned. A few years previously in the Soviet Union, for example, there had been some question of diverting rivers in Siberia in order to develop the region. The authors of that project had, however, not given enough thought to the effects it might have on location populations. As a famous academician had said at the time, it was not normal for a bureaucrat in Moscow to be able, with one stroke of the pen, to change people's environment and lives without consulting them first.

15. The world, like Ecuador, was all the richer for the diversity of its culture, which had to be preserved, even if that did not always make sense in economic terms.

16. Mr. de GOUTTES said that construction work could sometimes be an indirect way of discriminating against certain population groups, particularly indigenous ones, which usually could not put up much resistance. That question should therefore be considered in greater detail by the Committee.

17. Paragraph 45 of the twelfth report (CERD/C/226/Add.1) stated that oil exploration companies had to carry out environmental impact studies and submit a management plan describing the measures to be taken to minimize the adverse effects of project execution. However, paragraph 47 stated that the biggest oil exploration companies belonged to Texaco, whose activities had been undertaken without any environmental impact study, which had been made a requirement only in 1985. That exception was thus a matter of great concern.

18. Mr. WOLFRUM said that there was no question of agreeing that a small group might be able to hold up the execution of a project of great importance for the entire country, but only of considering problems on a case-by-case basis and of always taking account of the aspirations of the indigenous peoples whose environment would be altered by such a project. The problem was not only a financial one. He had asked some Hopi Indians why they refused to allow the subsoil of their reservation to be explored and they had replied that their religion prohibited such exploration and that they preferred to stay poor rather than contravene that prohibition.

19. Mr. van BOVEN said it was good that the Ecuadorian Government had drawn the Committee's attention to the effects that development projects might have on the environment and indigenous peoples. Perhaps the Committee could take part in the International Year for the World's Indigenous People by drafting a declaration or a general recommendation containing some general principles on that question.

20. Mr. RECHETOV said that he agreed with the views expressed by Mr. van Boven and that the proposed document might be entitled "economic development and rights of indigenous peoples". It would be addressed not only to Governments, but also to the peoples concerned, who would thus be aware that some legal and moral rules had to be respected and that such rules would take precedence over purely economic considerations.

21. Mr. LAMPTEY said that he did not agree with the direction the debate was taking, since the Committee seemed to be adopting a very militant attitude and to be dealing with very complex problems that did not really relate to racial discrimination.

22. In Ghana, the Akosombo Dam on the Volta had been and continued to be criticized in the developed countries, whose populations had a high standard of living and which used most of the resources of the rest of the world.

However, that dam was vital for the economy of the country. Some persons had, of course, been affected by its construction, but on the whole, it had improved the situation of the population.

23. The Committee must not look backwards on the pretext of protecting the environment. If nothing had been done, people would still be living in the Stone Age. In conclusion, he said that all those questions were extremely sensitive and that there was no consensus on them. The Committee therefore had to approach them cautiously and, in any event, not make any general recommendations in connection with them.

24. Mr. FERRERO COSTA commended the Government of Ecuador on having raised the question of the relationship between the rights of indigenous peoples and the use of natural resources, which was a matter of concern to other countries in Latin America and elsewhere. He found Mr. van Boven's proposal very interesting. He agreed with Mr. Lamptey that the question was very complex, but he thought that the Committee had to deal with it because it did relate to racial discrimination. The document proposed by Mr. van Boven might also form part of the Committee's contribution to the World Conference on Human Rights.

25. He thanked Ms. Sadiq Ali for having distributed the summary of the report of the Sub-Commission's Working Group on Indigenous Populations (E/CN.4/Sub.2/1992/33 and Add.1). The Committee should take account of the work of that Working Group when it considered the question of indigenous populations from the point of view of racial discrimination. Like other speakers, he welcomed the fact that the question of indigenous populations had been raised in connection with the consideration of the report of Ecuador, thus giving the Committee an opportunity to consider a question that went far beyond the context of that country.

26. Mr. Lamptey had worried about the "activist" tendency that might lead the Committee to deal with difficult and complex issues going beyond its mandate. In his own view, the Committee had one main function, which was to consider reports submitted by States and complaints by individuals, but that must not prevent it from dealing with more general problems linked to its main objective of eliminating racial discrimination. That was, moreover, the trend now taking shape in all international human rights treaty monitoring bodies. He therefore supported Mr. van Boven's proposal.

27. The CHAIRMAN, noting that the Committee was considering more than one question at a time, requested the members to deal only with the consideration of the report of Ecuador for the moment.

28. Mr. SHAHI pointed out that the current discussion had been triggered by the report of Ecuador. The Committee's consideration of the effects of economic development on indigenous peoples was, moreover, justified by some provisions of the Convention, such as article 1, paragraph 4, and article 2, paragraph 2. Mr. Lamptey had referred to the example of the construction of a dam in Ghana, but he himself did not think that that dam had had any consequences for any particular racial or ethnic group. In his view, the land question was especially important for indigenous peoples: there was a kind of "mystical link" between those peoples and their land and it was reflected in

collective ownership. In order to preserve that link and prevent the land from being taken away from the indigenous peoples, the Convention provided for and authorized special measures amounting to "positive discrimination".

29. Mr. PINOARGOTE CEVALLOS (Ecuador) welcomed the fact that his country's report had given rise to the current discussion. In future, it would be helpful for his Government to have a general recommendation by the Committee on the question of indigenous populations.

30. The Petroecuador-Texaco consortium referred to in paragraph 47 of the report had ceased to exist in 1992. At present, there was only the Petroecuador Company, which depended on the Ecuadorian Government and, in particular, the Office of the Under-Secretary for the Environment in the Ministry of Energy and Mines.

31. The CHAIRMAN thanked the delegation of Ecuador for introducing the report of its country and providing additional information.

32. *The delegation of Ecuador withdrew.*

33. *Mr. Valencia Rodriguez took the Chair.*

Seventh periodic report of the Central African Republic (CERD/C/117/Add.5)

34. Ms. SADIQ ALI (Country Rapporteur) said that the Committee was considering the implementation of the Convention in the Central African Republic in the absence of a representative of the Government and in the absence of a report. The fourth, fifth and sixth periodic reports of the Central African Republic had been submitted in one document (CERD/C/90/Add.10) in 1984 and had covered the period of the despotic Bokassa Government and the period following Bokassa's overthrow on by General Kolingba on 1 September 1981 in a bloodless coup that had had the backing of the military. The seventh periodic report of the Central African Republic had been due on 14 April 1984.

35. The Central African Republic was a landlocked country which had much in common with the neighbouring countries, Cameroon, Chad, Congo, Sudan and Zaire. The inhabitants of each part of the country had links with groups on the other side of the border. The population of that entire part of the world had been decimated for centuries by the slave trade, invasions from nearby kingdoms, foreign imperialism and forced labour. There were about 80 ethnic groups in the Central African Republic.

36. The earliest inhabitants of the Central African Republic had been the Pygmies, known by Bantu speakers as Babinga. At present, the Baya and Banda people accounted for nearly half of the total population, which had been estimated at 1.92 million in 1900. Other prominent groups were the Baka and the Zanda.

37. As far as religion was concerned, 50 per cent of the population was animist, 25 per cent Catholic, 6 per cent Protestant and 9 per cent Muslim.

38. French was the official language and Sango was also a major language. Swahili was used in the east, Arabic in the north and Hausa among traders.

39. In 1986, General Kolingba had been elected President for a six-year term and a Constitution had been adopted establishing a National Assembly. The following year, the Central African Democratic Assembly Party (RDC) had been formed as the sole legal party. Faced with growing discontent, General Kolingba had announced in April 1991 that other parties, legally registered by the Ministry of the Interior, could compete with the RDC in the legislative elections in March 1992 and the presidential elections in November 1992.

40. Sections of the ruling party had also begun to criticize official policy, according to the Africa Research Bulletin (Political Series, vol. 28, No. 6, June 1991, p. 1017), which quoted a report by the RDC Steering Committee referring to the "discrimination that has been inflaming public sentiment and fuelling ethnic dissension". It was also noted in that article that the administrative committee and parastatal organizations had become the domain of one ethnic group, an allusion to President Kolingba's entourage, which was composed mainly of Yakomas, "who make up less than 5 per cent of the population".

41. The right of private citizens to speak publicly about political developments or to criticize the Government was circumscribed. Newspapers and the media were all controlled by the Government and academic freedom was limited. Teachers had gone on strike to force the Government to bring about political reform.

42. In 1991, the Ministry of Justice had taken several steps to check growing judicial independence; it had created the post of Inspector General charged with the oversight of justice and had removed the President of the Supreme Court.

43. In the great National Debate in 1992, delegates had approved a revision of the Constitution which would set up a semi-presidential regime with strict separation of the executive, legislative and judicial powers. However, the presidential elections had been cancelled in November 1992 as a result of irregularities in the October polls. No new date had been set.

44. During the consideration of the last report, the Committee had expressed the hope that the Government of the Central African Republic would provide detailed information on the implementation of the provisions of the Convention and include the relevant legislative texts. That request was now being reiterated.

45. The revised Constitution should also guarantee respect for human rights and the principle of the equality of all under the law. During the consideration of the seventh report, the Committee had pointed out that, in practice, some minorities did not receive equal treatment. The

forest-dwelling Bayaka, or Pygmies, were subjected to discrimination and exploitation, which the Government had done little to correct. Pygmies were often hired by villagers to work for wages much lower than those received by other groups. Muslims, particularly Mbororo (Peuhl) herders, were sometimes resented by other Central Africans for their affluence and were thus singled out for harassment, especially by the police. There were few Muslims in senior Government posts.

46. It would also be useful to know how the judicial system operated and whether civil and criminal legislation was in force.

47. In the context of article 2 of the Convention, the Committee had noted that the practice of recording the ethnic origin of children, which had been prevalent in the Central African Republic, had been abolished in 1975. Under general recommendation IV, however, information on the demographic composition of the population, as referred to in article 1 of the Convention, was essential.

48. The Committee would also like to have information on the socio-economic situation of various ethnic groups and on what was being done to implement article 1, paragraph 4, and article 2, paragraph 2, of the Convention, especially to improve the living conditions of the Pygmies.

49. It wished to know whether the Government recognized and protected the right of minorities to have their own language and develop their own culture and what specific measures had been taken for that purpose.

50. The next report could usefully indicate, in connection with article 2, paragraph 1 (e), of the Convention, whether there were any integrationist multiracial organizations or non-governmental human rights organizations working to promote racial equality.

51. With regard to the implementation of article 4 of the Convention, the Committee again expressed the hope that the Government would take appropriate measures to fill the gaps in its legislation concerning the incorporation of the provisions of that article into domestic law.

52. The Committee also wished to have additional information on how Central African legislation corresponded to article 5 of the Convention.

53. The Committee had asked what legislative measures had been adopted by the Government to protect refugees and to implement a policy of granting asylum. In late 1991, over 50,000 Sudanese had fled civil strife in their country to seek safe haven in the remote south-eastern corner of the Central African Republic. According to reports, the Central African Government had appealed for emergency aid to help with the refugee influx.

54. The conflict in Chad had caused constant anxiety for the Central African Republic. Many Chadians had crossed the border in the northern part of the country, where it was feared that they might act as a catalyst for discontent among their fellow Sara tribesmen. According to the Office of

the United Nations High Commissioner for Refugees, 30,000 Chadians had entered the Central African Republic. The Government was not prepared to leave them in the northern area adjacent to Chad, since they might decide to take up permanent residence alongside their fellow Sara tribesmen.

55. With regard to article 6 of the Convention, the Committee had requested information on the right of recourse and on whether local or customary law encouraged recourse to conciliation in cases of racial discrimination. The Committee had also stressed the importance of providing information on the measures taken in the fields of education, training, culture and information under article 7 of the Convention.

56. In the past nine years, changes had taken place in the Central African Republic and the country had adopted a new Constitution, but the presidential elections had been postponed and a constitutional vacuum might occur. The last report did not contain satisfactory replies on the implementation of the articles of the Convention. It would therefore be necessary to send the State party a new communication, accompanied by the summary records of the meetings the Committee had devoted at its current and preceding sessions to the consideration of the situation in the Central African Republic, requesting information about constitutional and other developments relating to ethnic problems.

57. Lastly, she noted that the Committee had also drawn the State party's attention to the possibility of requesting the Centre for Human Rights to provide it with technical assistance to help it prepare reports for international human rights treaty monitoring bodies.

58. Mr. de GOUTTES thanked Ms. Sadiq Ali for having drawn attention to all the questions that had not been answered in the preceding report and letting the Government of the Central African Republic know what information it should give the Committee in its next report. The last available report, the seventh (CERD/C/117/Add.5), was totally obsolete. It dated from 1985 and had already been incomplete at the time. At the 1986 session, all members of the Committee had said how inadequate the report was. The Committee therefore had to ask for a new and entirely revised report based on the Committee's reporting guidelines. There were three main points on which the Committee had to ask for further information. First of all, what recent developments had taken place in the country from the political, economic and social points of view? What was happening with the planned elections? What had happened to the National Conference? Was headway being made towards a pluralist democracy? What about the amendment of the Constitution? Secondly, what was the demographic composition of the population and what were the exact numbers for each group, especially the Pygmy population? Thirdly, the Committee had to ask for copies of texts making racial discrimination an offence (art. 4 of the Convention) and, in particular, for data on the implementation of those texts.

59. Mr. ABOUL-NASR thanked Ms. Sadiq Ali and said that he agreed with Mr. de Gouttes. He proposed that the Secretariat should send the Permanent Mission of the Central African Republic to the United Nations a summary of the statements by Ms. Sadiq Ali and Mr. de Gouttes and let it know how much it deplored the fact that the Central African Republic was disregarding its obligations under the Convention.

60. Mr. van BOVEN said that he fully supported the statement by Mr. Aboul-Nasr. He proposed that the Committee should bring a list of all the States parties that were flagrantly disregarding their obligations under the Convention to the attention not only of the General Assembly, but also of the meeting of States parties to the Convention. As far as he knew, the next meeting of States parties, which was held every year, was to take place in January 1994.

61. Mr. DIACONU said that he was in favour of the proposals by Mr. Aboul-Nasr and Mr. van Boven.

62. Mr. FERRERO COSTA said that he also supported the two proposals. With regard to the second one, he said that the list to be sent to the meeting of States parties should refer to the member States which were really flagrantly disregarding the Committee's work.

63. Mr. ABOUL-NASR proposed that the Committee's decision on the question of the communication to be sent to the meeting of States parties should be taken at its next session.

64. Mr. DIACONU drew the Committee's attention to the situation of poor countries, such as the Central African Republic, which might not have the material means to prepare reports that involved work by several ministries, national institutes, non-governmental organizations and universities. If such countries had not fulfilled their obligations, the United Nations might offer them advisory services and help them train teams to prepare their reports.

65. Mr. ABOUL-NASR said that decisions had already been taken along those lines and that member States had been informed of the assistance they could obtain from the Centre for Human Rights for the preparation of reports. The question under consideration was not the problems that countries faced, but the interest they showed in the Committee's work.

66. Mr. de GOUTTES said that, like Mr. Diaconu, he was aware that some countries had problems preparing their reports. In the letter it would send to the Central African Republic, however, the Committee had to state that it deplored the absence of a delegation from that country during the consideration of its report and the fact that it had not come forward at all. It should also remind the Government of the Central African Republic that, if it wished, it could receive advisory services assistance from the Centre for Human Rights and that the Committee was at its disposal to help it prepare its reports.

67. Mr. GARVALOV said that the Committee had already dealt with other countries in that way and that it was time for it to adopt a firmer stance. It might thus indicate in its annual report that, by not submitting reports or by submitting them late, some States parties not only did not fulfil their obligations under the Convention, but also hampered the Committee's work in combating racial discrimination at the world level.

68. The CHAIRMAN suggested that the letter to be sent to the Permanent Mission of the Central African Republic should reflect the opinions expressed by the members of the Committee during the consideration of that country's report and that the question of the communication to be sent to the meeting of States parties should be considered at the Committee's next session.

69. *It was so decided*.

OTHER BUSINESS

70. The CHAIRMAN said that, on the previous day, the Bureau had adopted a draft letter to be sent to the President of the Commission on Human Rights concerning the Committee's willingness to cooperate fully with the Special Rapporteur appointed by the Commission to consider the question of contemporary forms of racism, racial discrimination and xenophobia and related intolerance (E/CN.4/1993/L.20/Rev.1, para. 10).

71. Mr. ABOUL-NASR proposed that, in the second sentence of the last paragraph of the letter, the words "In particular, the Committee places on record that it stands ready to" should be replaced by the words "In particular, the Committee expresses its readiness to".

72. Mr. WOLFRUM said it was regrettable that the Commission on Human Rights had considered that matter without first consulting the Committee.

73. The CHAIRMAN suggested that the Committee should adopt the draft letter with the amendment proposed by Mr. Aboul-Nasr.

74. *It was so decided*.

75. The CHAIRMAN said that the Committee might send a draft letter to the Ministers for Foreign Affairs of Bosnia and Herzegovina, Croatia, Slovenia, the Federal Republic of Yugoslavia (Serbia and Montenegro), the Czech Republic, the Slovak Republic and the States of the former Soviet Union which were not yet parties to the Convention concerning the status of those countries in relation to the Committee.

76. Mr. ABOUL-NASR said that he was not in favour of such a step.

77. Mr. BANTON said that he understood Mr. Aboul-Nasr's reticence.

78. Mr. FERRERO COSTA proposed that the consideration of that question should be deferred until a later meeting.

79. Mr. LAMPTEY said that the Committee had no authority to send communications to States requiring them to assume obligations under the Convention.

80. The CHAIRMAN suggested that the consideration of that question should be deferred.

81. It was so decided.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7)

82. Mr. BANTON, introducing agenda item 7, drew the attention of the members of the Committee to paragraphs 9, 22 and 23 of General Assembly resolution 47/77 and to paragraph 19 and sections I and II of the annex to document E/CN.4/1993/L.9 entitled "Activities recommended for inclusion in the draft programme of action for the third decade to combat racism and racial discrimination".

The meeting rose at 12.55 p.m.

CERD/C/SR.973
18 March 1993

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 973rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 March 1993, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 3.10 p.m.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7) (E/CN.4/1993/L.9) (continued)

1. Mr. van BOVEN, commenting on the annex to the Commission on Human Rights resolution (E/CN.4/1993/L.9) entitled "Activities recommended for inclusion in the draft programme of action for the third decade to combat racism and racial discrimination", said it was a cause for great satisfaction that section II listed the 10 themes for action that had been proposed by the Committee the previous year. Other themes suggested by the Committee had also been taken up in section I, paragraphs 30 and 31, of the annex. In particular, paragraph 30 suggested that an expert member of the Committee should be requested to prepare a report on obstacles encountered with respect to the effective implementation of the Convention by States parties and suggestions for remedial measures.

2. In paragraph 31, the Secretary-General proposed a set of topics originally suggested by the Committee as possible themes for seminars. One such topic was experience gained in implementation of the Convention and the efficiency of national legislation and recourse procedures available to victims of racism. The Committee could be expected to play a central role in such a seminar. Other topics were the eradication of incitement to racial hatred and discrimination, including the prohibition of propaganda activities and of organizations involved in them; the right to equal treatment before tribunals and institutions; and the transmission of inequality from one generation to another, with special reference to the children of migrant workers and the appearance of new forms of segregation.

3. Drawing particular attention to the suggested seminar on international cooperation in the elimination of racial discrimination, he said that, during the first week of the current session, some members had expressed concern about the Committee's somewhat isolated position with regard to action to combat racial discrimination, both within the United Nations and in relation to non-governmental organizations and national and international institutions, particularly since the Convention was silent on any kind of cooperative relationship with other bodies. Indeed, the Committee had recently sent a letter to the Commission on Human Rights stating that it was willing to enter into a cooperative relationship with the Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance. The suggested seminar would therefore be very useful in helping the Committee to see what kind of cooperation it could develop with other bodies.

4. Non-governmental organizations did not have consultative status with the Committee and did not take part in the consideration of the reports of States parties. However, it would be a great advantage for the Committee to have the cooperation of national bodies in ensuring that the standards which States parties claimed to abide by were actually implemented in practice. While it was true that the Committee did engage in dialogue, it had no idea what impact that dialogue might have either within the United Nations or at the country level.

5. He believed that, without abandoning its independent status and without becoming politicized, the Committee ought to become more relevant, and ought to improve its feedback and follow-up. That was why he was extremely interested in the role the Committee might play in a seminar on international cooperation. If possible, it should insist that such a seminar should focus on its own work.

6. Mr. de GOUTTES said he, too, had been very interested in the suggestions for action contained in the annex to the Commission's resolution and, in particular, in the suggestions for regional seminars and workshops that might be organized by the Committee. Two of the themes suggested for those seminars might interest the Working Group on Prevention, since they involved the need for preventive action. The first was the one made in paragraph 31 (b), namely, the eradication of incitement to racial hatred and discrimination, including the prohibition of propaganda activities and of organizations involved in them. The second was the one contained in paragraph 31 (g), namely, a workshop on flows of refugees due to ethnic conflicts or political restructuring of multi-ethnic societies in socio-economic transition. He suggested that those two themes should be taken into account in any measures proposed by the Working Group on Prevention.

7. Mr. WOLFRUM said he agreed with Mr. de Gouttes that it would be appropriate for the Committee to suggest that seminars should be held on the eradication of incitement to racial hatred and on flows of refugees, since those were urgent problems in some regions. The Committee had already had some discussion with the Sub-Commission on the subject of incitement to racial hatred and could thus build on past experience.

8. Mr. ABOUL-NASR said he hoped that, during the third decade, the Committee would pay more attention to practical ways of cooperating with local and regional human rights bodies. While he himself had no preferences as far as the suggested themes were concerned, since they were all of equal merit, it was important that the seminars should be held in different parts of the world and, in particular, in developing countries. Such seminars were usually heavily attended by experts from western European countries and not enough was done to involve experts from the developing world. It was not very healthy to confine such gatherings to like-minded persons who spoke a language that others might not understand. Ways should be found of involving national and regional bodies which were actually combating racial discrimination at first hand, but who often lacked the means to travel to seminars. That point should be taken into account in any resolution the Committee might adopt on the subject.

9. Mr. YUTZIS said that most of the themes listed in paragraph 31 of the annex related to the implementation of international instruments, but very little emphasis was given to the diagnosis of the underlying causes of racism and racial discrimination and some of the subparagraphs were confusingly worded. He was not clear which of the various international bodies with competence in the matter would be taking on the task of studying the various topics.

10. With regard to the theme suggested in paragraph 31 (d), transmission of racial inequality from one generation to another, it was noteworthy that, in some societies, it was young people who displayed the most extreme racist attitudes, although they themselves had not suffered from any systematic form of racial discrimination. He suggested that a seminar should be held on the causes of the current emergence of particularly violent forms of racism and racial discrimination. That was a very relevant issue where prevention was concerned.

11. Mr. DIACONU said he was not clear what kind of exercise the Committee was now engaged in. Members had singled out some of the themes listed as being of particular interest and Mr. Yutzis had now suggested an additional one. While the Committee might wish to decide which of the themes should have priority, it could hardly reject themes it had itself proposed to the Commission on Human Rights.

12. Paragraph 2 of the unnumbered paper submitted by Mr. Banton on the Third Decade to Combat Racism and Racial Discrimination stated that the Committee had decided to take up for consideration the first of the themes listed in section II of the annex. Was that theme to be included in its agenda and was a paper to be prepared on the subject? The paragraph also stated that the Committee would prepare "a review of achievements and outstanding problems" for transmission to the Commission. Since the Commission had not called for such a review, it was presumably intended as a contribution to one of the seminars.

13. As he saw it, any such reviews should be included in the Committee's annual report to the Commission. All the Committee needed to do was to express willingness to take part in the workshops and seminars proposed in paragraph 31 and to indicate which of the themes suggested should have priority.

14. Mr. BANTON said he did not think that the Committee had to draft a resolution at the present stage; it would be enough for it to transmit the summary record of the current discussion to the persons responsible for preparing any further documents the Secretary-General might submit to other bodies in connection with the third decade.

15. He endorsed the views of Mr. Aboul-Nasr and drew attention to a possible contradiction between the first two sentences of paragraph 31 of the annex and the suggested themes for seminars. If the purpose of regional workshops was to spread awareness of the Convention and the protection it provided, they were to some extent a public relations exercise rather than an academic one. Whereas it might be desirable to hold Geneva-style seminars, organized by the staff of the Centre for Human Rights, on some of the themes listed, perhaps regional workshops should be organized rather differently. Non-governmental organizations should be closely involved in the planning of such workshops, which should be directed at a much larger audience, making use, for example, of video material.

16. In reply to Mr. Diaconu, it was true that the Committee had not been asked to take up the theme of eradication of incitement to racial hatred and discrimination, but he believed it would be useful for it to do so as a way of continuing its contribution to the Third Decade. The review could also be relevant to other bodies.

17. The 10 themes listed under section II had been put forward because the Committee had understood that the Commission on Human Rights itself intended to adopt a thematic approach to the third decade: again, although the Committee had not been asked to produce that list, it had been seen as a useful contribution. A statement by the Committee on what it saw as problems in the eradication of incitement to racial hatred, and what approaches had been effective in solving them, could be a useful basis for discussions in other bodies.

18. Mr. LAMPTEY said that he was in favour of taking up the theme listed in paragraph 31 (b), but did not consider that it was the Committee's role to prepare a review of achievements for transmission to the Commission on Human Rights. He could, however, agree that the Committee might prepare such a review as a contribution to the World Conference on Human Rights.

19. Mr. van BOVEN said that, although the Committee's primary role was to promote the implementation of the Convention, members had agreed that from time to time a thematic discussion on issues arising out of discussions with Governments helped them to become more aware of the issues involved and to fulfil their mandate.

20. Mr. DIACONU said that, as he understood it, the topic to be chosen was a matter for reflection which would help the Committee in its consideration of reports. Any recommendations that emerged would be useful, but, even if none did, the Committee would have gained the experience of an in-depth study and could include the topic in the agenda of a later session. It might be useful if a member of the Committee introduced the topic.

21. He endorsed Mr. Lamptey's views with regard to the Committee's note and agreed that it might submit a review of achievements to the Secretary-General or to the World Conference on Human Rights, at which the Committee would have a contribution to make.

22. Mr. SONG Shuhua said that, in view of the problems that now existed in various parts of the world, the theme referred to in paragraph 31 (b) of the annex was both appropriate and important and should be given priority. The question of indigenous populations and ethnic groups and their status in the light of the development of States might also be included in the agenda of the Committee's August 1993 session. Clear-cut ideas and a common understanding among members would be useful in future discussions of reports and help to improve the quality of the Committee's work.

23. Mr. GARVALOV pointed out that the themes for the third decade had been chosen six months previously. Although they were still relevant they needed to be adjusted in the light of new forms of racial discrimination and the more serious ethnic conflicts now going on.

24. The Committee might consider entering the third decade by preparing an analysis of the real situation in the world from the point of view of racial discrimination, including its spread and the new and more subtle forms it was taking. The study would not have to be too long, but it should be factual and to the point. Such action would be entirely within the Committee's mandate.

25. Mr. YUTZIS drew attention to the link between paragraphs 30 and 31 (a) of the annex: in both cases, the effectiveness of the implementation of legislation against racism was dealt with on the basis of the Committee's experience. He therefore proposed that the Committee should appoint one of its members to prepare the report suggested in paragraph 30.

26. He also proposed that the seminar suggested in paragraph 31 (b) should analyse the underlying causes of recent manifestations of racism and the violent ethnic conflicts now taking place. Priority might be given to a seminar on all aspects of international cooperation, which would take account of the contributions of all those who wished to play a role in action to combat racial discrimination.

27. Mr. SHAHI said that there was no question of the Committee taking any action on the recommendations contained in the resolution adopted by the Commission. The Committee was not a subordinate body, but an independent one. In its resolution, the Commission had, moreover, adopted all the recommendations made by the Committee to the Secretary-General.

28. It might be useful if the Committee decided what further action it might recommend to the General Assembly in its next report, in which connection the suggestions made by Mr. de Gouttes were relevant. It might also draft a provisional recommendation relating to the third decade. It was clear, however, that any recommendations the Committee made would be referred to the General Assembly.

29. Mr. LAMPTEY said that he did not see any need for the paper on the third decade to combat racism and racial discrimination prepared by Mr. Banton. The Committee was to make suggestions and take decisions on the various seminars which should be held and which had been accepted by the Economic and Social Council for the third decade. The only problem related to resources.

30. There was also no need for the Committee to discuss the question of which seminars should have priority: some were supposed to be held at the regional level, although it was to be noted that none had been planned for Latin America. The Committee's views would be included in its report to the General Assembly, which would provide for funding.

31. The CHAIRMAN said that it would be helpful to see which suggested themes had the most support. Thus far, there appeared to be full agreement on the seminar on the eradication of incitement to racial hatred and discrimination, including the prohibition of propaganda activities and their organizations involved in them.

32. Mr. YUTZIS said that, as he understood it, the Committee was free to make further suggestions on the annex to the Commission on Human Rights resolution. Its suggestions would most certainly be taken into account in future planning for the decade.

33. There was no reason why the Committee should not comply with the request made in paragraph 30 of the annex that it should provide an expert member to prepare a report on obstacles encountered with respect to the effective implementation of the Convention. That report could serve as a starting point for the seminar to assess the experience gained in the implementation of the Convention, referred to in paragraph 31 (a).

34. A theme of particular importance was the eradication of incitement to racial hatred and discrimination, which included the prohibition of propaganda activities and of organizations involved in them. A seminar on that theme should focus on the causes of the recent emergence of racism and xenophobia. Particular emphasis should be placed on analysing the relationship between violence and racism, which was fundamental to understanding racial discrimination in its current form. Such an analysis could serve as a basis for the adoption of new measures to combat modern forms of racism.

35. He agreed that priority should also be given to the proposed seminar on international cooperation in the elimination of racial discrimination. It must be ensured that a large number of bodies and organizations involved in international cooperation were represented at the seminar.

36. Mr. LAMPTEY said that it was time for the Committee to move on to other matters. The Commission's resolution would be considered by the General Assembly at its forty-eighth session, at which time the Assembly would take a final decision on the contents of the programme of action for the third decade. The remaining arrangements would be made in the light of the Assembly's decision.

37. He agreed that it would be a good idea for an expert member of the Committee to prepare a report on obstacles encountered with respect to effective implementation of the Convention.

38. Mr. GARVALOV said that the Committee should refrain from introducing new elements into the Secretary-General's report, which was contained in document A/47/432 and had already been considered by the General Assembly.

39. The Committee must keep abreast of world events and should incorporate those relating to the problem of racial discrimination into its priority themes. For example, the theme on the eradication of incitement to racial hatred and discrimination had been an appropriate choice in August 1992. However, six months later, it was too general; it had to be reworded to reflect current realities, in particular the serious problem of ethnic conflicts developing into armed conflicts. The Committee should not limit itself to the consideration of the reports of States parties. In the light of subsequent developments, it was clear that the Committee should have had the courage, during its consideration two years previously of the report of Yugoslavia, to speak out about the situation in Kosovo.

40. Mr. DIACONU said that, in response to the Commission's resolution, the Committee should take note with interest of its provisions, in particular section II of the annex, and express its willingness to take part in the proposed activities. The Committee should also state that it welcomed the fact that one of its members would be appointed to prepare a report on obstacles encountered with respect to the effective implementation of the Convention. The Committee itself was not in a position to appoint the expert; that would be the task either of the General Assembly or of the Commission on Human Rights. The Committee might therefore wish to affirm that it expected the Chairman of the Commission on Human Rights to appoint the expert in question, as was customary in such cases.

41. The Committee might further state that it gave priority to the proposed seminar on the eradication of incitement to racial hatred and discrimination, with particular emphasis on the relationship between racism and violence.

42. Lastly, the Committee might state that the other proposed workshops and seminars should be held at the regional level, depending on the particular topic to be discussed.

43. Mr. van BOVEN said that it was not clear whether it was the General Assembly or the Commission on Human Rights that would actually be in charge of the third decade to combat racism and racial discrimination. In paragraph 22 of its resolution 47/77, the General Assembly had requested the Secretary-General to prepare a draft programme of action for the third decade and to submit that programme to the General Assembly at its forty-eighth session. Yet, paragraph 22 of the Commission's resolution stated that the Commission had decided to consider at its fiftieth session, as a matter of high priority, the draft programme of action for the third decade to combat racism and racial discrimination. By the time the Commission's fiftieth session was held, the programme of action should already have been adopted by the General Assembly.

44. In his view, the General Assembly would be responsible for coordinating the programme of action. The question arose then as to how the Committee might participate at present. It could hold thematic discussions on the themes to be included in the programme of action, thus improving its own effectiveness. It could also make proposals to the Secretary-General for activities to be included in the final draft programme of action for the third decade. All those matters, including any suggestions made by the Committee, would have financial implications and would be taken up as a budgetary issue.

45. Ms. KLEIN-BIDMON (Representative of the Secretary-General) recalled that, in 1992, the Economic and Social Council had requested the Secretary-General to prepare for the General Assembly a preliminary programme of action, to which the Committee had made an important contribution. In paragraph 22 of General Assembly resolution 47/77, the Secretary-General had been requested to prepare a draft programme of action for the third decade and to submit that programme to the General Assembly at its forty-eighth session. The Committee was, of course, welcome to make additional suggestions relating to the draft programme of action, but it should do so as soon as possible.

46. In formulating its resolution, the Commission on Human Rights had been responding to paragraph 23 of General Assembly resolution 47/77, in which the Commission had been invited at its forty-ninth session to recommend activities to be undertaken during the third decade. The Commission had endorsed a number of the Committee's proposals and had incorporated them into its own recommendations.

47. Mr. de GOUTTES said that the Committee must respond to Mr. Garvalov's suggestion that it should stress the emerging phenomenon of massive ethnic conflicts which might degenerate into ethnic wars or which had already done so. In that connection, he noted that paragraph 3 of Mr. Banton's text on the third decade to combat racism and racial discrimination referred to the importance of tensions based upon differences in ethnic origin as a new form of racial discrimination. In addition, paragraph 31 (g) of the Commission's resolution emphasized the problems arising from flows of refugees due to ethnic conflicts or political restructuring of multi-ethnic societies in socio-economic transition, in particular, in Eastern Europe, Africa and Asia. That problem would certainly come up when the Committee considered the conclusions of the Working Group on Prevention. In that connection, he wondered if the current discussion would not be more appropriate within that context.

48. Mr. FERRERO COSTA said that there was still the question of how the Committee could best contribute at the current stage to preparations for the final programme of action for the third decade. A number of useful suggestions had already been made.

49. In its response to the Commission's resolution, the Committee should take note with gratitude of the fact that the Commission had taken account of its recommendations. It might also express satisfaction that, under the programme of action, a member of the Committee would be requested to prepare a report on obstacles encountered with respect to the effective implementation of the Convention by States parties.

50. The Committee was free to make additional suggestions relating to the final programme of action for the third decade and, in that connection, he endorsed the two new themes that had already been mentioned - the relationship between racism and violence and the problem of armed conflict arising from ethnic conflicts.

51. The Committee might also wish to deal with specific topics relating to racial discrimination. In that connection, he agreed that the conclusions of the Working Group on Prevention should be discussed as soon as possible. The Committee had enough elements to prepare a text on the third decade to combat racism and racial discrimination that it could adopt at its August 1993 session.

52. Mr. SHAHI said it was unlikely that the General Assembly itself would be responsible for coordinating the activities of the third decade. It would probably appoint the Commission on Human Rights to carry out that task.

53. In the light of the current discussion, the Committee might wish to revise the 10 themes it had proposed earlier relating to action to combat racism and racial discrimination. Ethnic conflicts had emerged as the issue to which the highest priority should be given. That topic might be the key to understanding racial discrimination during the third decade.

54. Owing to time constraints, it might not be possible for suggestions arising out of the Committee's August 1993 session to be included in the Secretary-General's report on the draft final programme of action for the third decade. The Committee might therefore wish to take the relevant action at its current session, without prejudice to any further topics it would discuss in August.

55. Mr. LAMPTEY suggested that Mr. Banton might prepare a list of proposed topics for the programme of action for the third decade.

56. Mr. YUTZIS said that he did not see how the suggestion that an expert member of the Committee should be requested to prepare a report on obstacles to the implementation of the Convention could be incorporated into Mr. Banton's draft. Perhaps the Committee should nominate one of its members for that task straight away.

57. Mr. FERRERO COSTA suggested that the Committee should express its support for the idea of preparing the report, but should not nominate one of its members yet.

58. Mr. BANTON said that he would find it difficult to reconcile the very different views expressed by members. Mr. Garvalov considered that the Committee should concentrate on topical issues such as the situation in Kosovo; Mr. Lamptey felt that concentration on topical issues would cause too many problems; he himself had doubts about the proposal that a member of the Committee should be requested to prepare a report on obstacles to the implementation of the Convention. If the Committee was to do its work well and to gain the respect of other human rights bodies, it must concentrate on a small area and research it thoroughly, making full use of its unique experience. Otherwise, it would be forced to rely on newspaper reports and other freely available information, and any other body could do that just as well.

59. The Committee seemed to be discussing two distinct issues: first, the activities to be proposed to the Secretary-General for the third decade and, secondly, the subject of the thematic discussion to be held at the Committee's next session. Did all members agree with the latter suggestion and which theme did they wish to choose?

60. The CHAIRMAN said that there seemed to be a consensus that a thematic discussion should be held at the Committee's next session. He invited the Committee to choose one of the issues which had been raised during the meeting.

61. Mr. van BOVEN said that the prevention of ethnic conflicts seemed to be the most urgent issue of those discussed so far. There were other possibilities, too; at the preceding meeting, the Committee had discussed the problems of indigenous peoples and he intended to submit a draft text on the subject for eventual publication as a general recommendation of the Committee or, perhaps, as the subject of a thematic discussion.

62. The Committee should not consider itself bound too strictly by the list of 10 themes adopted at the preceding session. Other issues might come up which were even more important and the Committee must remain flexible.

63. Mr. RECHETOV said that the issue of prevention of ethnic conflicts would become clearer if the Committee considered a number of specific situations. A variety of measures could be used to combat racial discrimination, from preventive diplomacy to outright military intervention. However, in many cases, States failed to take advantage of existing provisions of their Constitution or Penal Code: there were very few convictions for incitement to racial hatred. By considering specific cases of incitement, the Committee might be able to decide how further cases could be prevented.

64. He welcomed the suggestion that the Committee should discuss thematic issues, rather than merely considering the reports of States parties, but he thought that the results of those deliberations should be published in some form, whether as a special report, a recommendation or a research paper. Many other human rights bodies would be studying the Committee's conclusions and judging its worth on that basis; it was important that the work produced should be of a high quality.

65. Mr. DIACONU said that he was in favour of the topic of the eradication of incitement to racial hatred. However, the Committee must remember that it had originally been set up to monitor the implementation of the Convention and should not allow itself to be distracted by thematic discussions. If it could draw up a recommendation on some important human rights issue, so much the better, but it must remember its real task.

66. Mr. YUTZIS said that the relative importance of various human rights issues and their connection with the prevention of massive human rights violations was a substantive problem that deserved discussion. Prevention of human rights violations entailed predicting what was likely to happen and taking action to ensure that it did not. The international community had failed on both counts in the case of former Yugoslavia, but it was too late to talk about prevention there. He felt that the issue of religious intolerance could also be discussed in relation to the prevention of human rights violations, since it generally involved many issues besides the purely religious aspect.

67. He had been discussing with Mr. Wolfrum the emergence of racist beliefs among very young people, who had never experienced racial discrimination or xenophobia as older generations had. It was essential to find out what potential conflicts were brewing and what could be done to prevent them. To speak in psychoanalytical terms, it was essential to differentiate between "tension" and "conflict", since reducing tension did not necessarily prevent

conflict. In his opinion, human rights violations could be prevented only by analysing the reasons why a conflict might arise. If the matter was seen in that light, there was a clear link with racial violence. That was a departure from the past, when racial discrimination had been analysed mainly in economic terms.

68. He suggested that the Committee's thematic discussion at its next session should cover the relationship between racism and violence from an interdisciplinary standpoint. A holistic approach was needed if the Committee was not to concentrate on existing conflicts, where it was useless to talk about "prevention".

69. The CHAIRMAN, summing up the discussion, said that three subjects had been suggested for the thematic discussion: the eradication of incitement to racial hatred, the prevention of massive human rights violations and the relationship between racism and violence.

70. Mr. GARVALOV recalled that he had suggested that the Committee discuss the situation in Kosovo. There was no war yet in Kosovo, but there could well be one soon and he thought that the Committee would be failing in its duty if it did not look for ways of preventing a war and inform the Security Council and the Secretary-General of its conclusions as soon as possible. It was too late to prevent the war in former Yugoslavia, but it might still be possible to prevent a war in Kosovo.

71. Mr. LAMPTEY said that he would welcome more information about what was actually happening in Kosovo. Many members had said that the Committee should have stated its views more firmly during the consideration of the report of Yugoslavia, but he did not see how that could have been done. He had been the chairman of a conference of non-aligned countries in 1992 and he had been so concerned about the situation in former Yugoslavia, a founder member of the Non-Aligned Movement, that he had prepared a personal statement on the issue. The Yugoslav delegation had objected so strongly that he had eventually withdrawn his statement, so that the conference had made no reference at all to the matter. If the Committee were to discuss such sensitive political issues, it must have detailed and accurate information on the real situation in Kosovo and be sure that the potential conflict was genuinely ethnic in nature.

72. Mr. WOLFRUM said he agreed with Mr. Garvalov that the Committee could not confine itself to abstract issues such as incitement to racial hatred without considering actual situations. At its preceding session, it had discussed the question of Burundi, even though no report was pending, for just the reasons cited by Mr. Garvalov. The Committee should deal with situations where ethnic issues could lead to conflict. States parties often claimed that no such ethnic problems existed, but that was really for the Committee to decide.

73. He also supported Mr. Yutzis' idea for a study of the relationship between racism and violence, which would tie in well with the work of the new Special Rapporteur of the Commission on Human Rights on contemporary forms of racism and racial discrimination.

74. The CHAIRMAN said that the Committee had clearly not yet agreed on the subjects for the thematic discussions at its next session and suggested that the item should be taken up again at a later date.

The meeting rose at 6.05 p.m.

CERD/C/SR.974/Add.1
9 August 1993

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 974th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 12 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

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* The summary record of the first part (closed) of the meeting appears as document CERD/C/SR.974.

The meeting was called to order at 11 a.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SEVENTH SESSION (agenda item 2) (continued)*

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (GENERAL ASSEMBLY RESOLUTION 47/79);

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION 47/111)

Report of the Working Group on Prevention and Emergency Situations

Prevention of racial discrimination and related human rights violations, including early warning and urgent action procedures: working paper submitted by Mr. Régis de Gouttes (CERD/C/1993/Misc.1)

1. Mr. de GOUTTES (Coordinator of the open-ended Working Group on Prevention and Emergency Situations), introducing the working paper prepared by the Group, entitled "Prevention of racial discrimination and related human rights violations, including early-warning and urgent action procedures" (CERD/C/1993/Misc.1), said that the previous day's discussion on the Second Decade for Action to Combat Racism and Racial Discrimination had been a valuable contribution to the debate on prevention and emergency situations. The question was of great current relevance, as Mr. Garvalov had emphasized in drawing attention to the danger of ethnic conflicts degenerating into armed conflicts.

2. The Working Group established by the Committee to study measures to prevent all forms of racial discrimination and respond to emergency situations in accordance with the recommendations of the fourth meeting of chairpersons of human rights treaty bodies (A/47/628, paras. 42-45), had met on 4 and 5 March. Its report (CERD/C/1993/Misc.1) was based on the views expressed by the members of the Committee participating in the meetings and on the exchanges of views which had taken place during the discussion of the agenda item on preparations for the World Conference on Human Rights.

3. The Working Group noted first of all that, in his report entitled "Agenda for Peace", the Secretary-General had given great prominence to early-warning mechanisms and preventive diplomacy, which consisted in identifying "at the earliest possible stage situations that could produce conflict" and in trying "to prevent disputes arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when

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* Resumed from the 963rd meeting.

they occur", particular regard being had to the rights of minorities (A/47/277, paras. 15, 18, 20 and 23). He noted that, in his report to the forty-seventh session of the General Assembly on the work of the Organization, the Secretary-General had emphasized the need to identify situations which could degenerate into human rights violations and to take preventive measures, for example, to reduce tensions relating to minorities (A/47/1, para. 102). He also drew attention to resolution 47/120 entitled "An Agenda for Peace: preventive diplomacy and related matters", in which the General Assembly emphasized the need to strengthen the role of the Organization in preventive diplomacy. The chairpersons of the human rights treaty bodies had noted in their conclusions that those bodies had an important role to play in seeking to prevent as well as to respond to human rights violations (A/47/628, para. 44).

4. Part III of the working paper surveyed new prevention measures recently adopted by other human rights treaty bodies - the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

5. Part IV listed measures which the Committee might adopt in order to contribute to more effective prevention, as it had been requested to do by the Secretary-General, the chairpersons of the human rights treaty bodies and the Preparatory Committee for the World Conference on Human Rights. The Working Group drew a distinction between early-warning measures for preventing structural problems from escalating into conflicts and urgent action measures for situations requiring the immediate attention of the Committee. The distinction was not an absolute one; it was merely intended to clarify matters. The Working Group also indicated criteria for action by the Committee. They were along the same lines as those adopted by other bodies.

6. The early-warning measures envisaged by the Working Group were the following: the Committee could establish a follow-up mechanism to conclusions it adopted after the consideration of the reports submitted to it; send visiting missions to help Governments ensure protection for the rights of racial minorities; make recommendations to States parties to avail themselves of the Advisory Services of the Centre for Human Rights; convey to the Assistant Secretary-General for Human Rights its concern that an early-warning mechanism should be set up; place some of its members at the disposal of the Centre for Human Rights to participate in prevention activities; strengthen cooperation with regional human rights protection mechanisms; and play a more active role in encouraging international assistance for protection against racial discrimination.

7. The urgent action measures would relate to problems requiring immediate attention. They would consist in: establishing an urgent action procedure in accordance with article 9, paragraph 1 of the Convention (an innovation of that type had already been adopted by the Human Rights Committee with regard to the former Yugoslavia); designating a rapporteur on critical situations; and making recommendations to States parties, to the Special Rapporteur established under Commission on Human Rights resolution 1993/20, to the Assistant Secretary-General for Human Rights and indeed to the Secretary-General. Mr. Shahi had thought that the recommendations to the

Secretary-General should be referred to separately between paragraph 20 (i) and (j) or even further up. In his own view, the Committee might also bring a situation to the attention of any other human rights body.

8. The working paper also envisaged "other measures", such as informal meetings at the regional and national levels, joint seminars with regional bodies, as discussed by the Committee at its preceding meeting, and meetings, where appropriate, with the special rapporteurs of other human rights treaty bodies. He noted that a similar procedure had been proposed in the last report of the Committee on Economic, Social and Cultural Rights (E/C.12/1992/CRP.1/Add.11). Among subjects for the seminars, incitement to racial discrimination might be considered or, as proposed by Mr. Yutzis, "racism and violence".

9. He thought that the title of the working paper should be changed to "Prevention of contemporary forms of racial discrimination, including of ethnic origin, including early warning and urgent action procedures". Moreover, in the body of the text, the words "violations of human rights" should be replaced wherever they appeared by the words "racial discrimination, including of ethnic origin, and other human rights violations".

10. Mr. ABOUL-NASR said he was afraid that, in the new title of the working paper proposed by Mr. de Gouttes, the words "contemporary forms" and "including of ethnic origin" would be too restrictive. He would like consideration to be given in the text to situations where States refused to cooperate, as was the case in the former Yugoslavia. Moreover, he was not certain that all the suggestions listed were appropriate in emergency situations. He had in mind other forms of action.

11. In the first place, when an emergency situation arose, the Committee should alert the States parties concerned by means of a communique or a report to take measures in accordance with their commitments under the Convention. In the second place, it should send urgent requests for information to all States parties in accordance with article 9 of the Convention. The Committee could thus ask those States to inform it about the application of internationally agreed measures. It was, for example, known that, in the former Yugoslavia, sanctions were having hardly any effect and that, in particular, oil was in more abundant supply than ever. Reports could be called for on the implementation of that type of sanctions, as had been done in the case of South Africa. Member States should urgently inform the Committee of the measures they had taken and were intending to take. In the third place, the Committee could ask States parties where an emergency situation existed, like Yugoslavia, to submit reports to it at its next session, which it would study in the light of experience with earlier reports. He had to admit that he had considered the earlier reports from Yugoslavia satisfactory, but everyone knew how much the situation had deteriorated. In future, the former Yugoslavia should be asked to inform the Committee of serious situations, such as that existing in Kosovo and the one taking shape in Macedonia - places where regional wars, or even a world war, could break out. Generally speaking, he thought that the Committee should try to devise practical urgent action measures, which were more important than seminars.

12. Mr. YUTZIS thanked the Working Group and said that Mr. Aboul-Nasr's proposals were interesting. The working paper (CERD/C/1993/Misc.1) might be expanded to include those proposals and others that members of the Committee might make.

13. Mr. DIACONU said that he thought that too much emphasis was being placed on the case of the former Yugoslavia. In that situation, it was evident that some population groups were unwilling to be minorities in new States, but that was not typical, because minorities in the majority of countries accepted their situation. The Yugoslav experience could, in that respect, be a lesson for the future for all Governments.

14. The early-warning mechanism under discussion had been requested by the General Assembly, as was made clear in part II of the working paper, and it should be borne in mind that it was not one suggested by the Committee itself. As to the distinction between early warning and urgent action measures, Mr. de Gouttes had recognized that it should not be rigid. Indeed, it would be preferable to consider one single type of measure, as, in both cases, the problems and objectives were identical.

15. He did not think that the criteria for the use of preventive measures (CERD/C/1993/Misc.1, para. 19) should include racial violence advocated by political figures, but only that advocated by elected representatives and officials, for it was they who were responsible for the implementation of the Convention. He therefore proposed that the words "or political figures" should be deleted. As to "significant refugee flows", the immediately following criterion, he thought that, as the majority of refugees were economic refugees, the words "related to a pattern of discrimination in conformity with article 1, paragraph 1, of the Convention" should be added.

16. With regard to the follow-up mechanism referred to in paragraph 20 (a), he asked whether the secretariat could not, at the beginning of each session, summarize the recommendations made to Governments by the Committee.

17. Paragraph 20 (b) should be deleted, as the missions in question were not within the Committee's mandate.

18. In paragraph 20 (d), the words "Under-Secretary-General" should be replaced by the words "Secretary-General". That also applied to paragraph 20 (j).

19. The urgent action mentioned in paragraph 20 (h) should be taken only if massive, exceptional violations occurred between sessions of the Committee. The paragraph should therefore be reworded along those lines.

20. Paragraph 20 (i) should be deleted.

21. In the first line of paragraph 20 (j), the words "after considering reports by States" should be added after the words "of its concern". The last two lines of the paragraph should also be deleted as it was not for the Committee to recommend that the Secretary-General should bring a matter to the attention of the Security Council.

22. In paragraph 20 (k), mention should be made of the seminars the Committee intended to hold on particular subjects and it should be stated that meetings could be held with the rapporteurs dealing with those subjects.

23. The Committee should take care not to encroach on the mandate of other bodies and to concern itself exclusively with human rights violations related to racial discrimination.

24. He agreed with Mr. Aboul-Nasr that there was no need to specify discrimination of ethnic origin in the title of the document, since the Committee's terms of reference covered all forms of racial discrimination without exception.

25. Mr. RECHETOV said he agreed with Mr. Diaconu that the matters being discussed by the Committee did not really relate to the case of the former Yugoslavia. The Security Council and the Commission on Human Rights were the bodies responsible for dealing with that case.

26. In his opinion, there would be little practical point in asking States parties for information. The Committee's task was to devise a method that would enable it to deduce from consideration of a given country's report that the situation there might become catastrophic or even degenerate into armed conflict. The Committee's experts must endeavour to detect circumstances in which a fire might break out and Mr. de Goutte's working paper would greatly help them in that task. He recalled that, after studying the Yugoslav report two years previously, the Committee had not been able to warn the international community about the fire smouldering in that country. It could be expected that States that were parties to all the fundamental human rights instruments would be capable of dealing with ethnic problems that are in their territories, whereas the situation in States that refused to ratify or apply the instruments might readily deteriorate.

27. The Committee should perhaps make use of some international instruments which were not directly linked to racial discrimination, but were of major interest, for example, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. In some countries, intolerance was defended on religious grounds and sometimes on grounds that were both religious and national. The Committee might take its cue from the Declaration in studying forms of intolerance based specifically on membership of a race or ethnic group.

28. In defining criteria, as was attempted in paragraph 19, the Committee might also draw on the Declaration on Race and Racial Prejudice adopted by the UNESCO General Conference. Among criteria to be considered should be mentioned the advocacy of theories based on the superiority of a particular ethnic or racial group and the infringement of the rights of particular ethnic groups. The constitutions of some States provided that members of a particular ethnic group were entitled to citizenship or that a particular religion was the State religion. It could be said that the preconditions for civil war existed in some of those States. Any State seeking to base itself on the idea of the primacy of one race or ethnic group would inevitably experience very grave problems.

29. In paragraph 20 (h), the Committee should not mention any particular State as the paragraph would apply to all situations without exception.

30. Mr. WOLFRUM congratulated Mr. de Gouttes on the quality of his working paper. It should, however, be emphasized that the measures proposed could not be applied unless the parties concerned agreed to cooperate.

31. It could no longer be claimed at the present time that the protection of human rights in general and action to combat racial discrimination in particular were exclusively internal concerns of States, and article 2, paragraph 7, of the United Nations Charter was no longer applicable to such cases.

32. He agreed with Mr. Aboul-Nasr that the title of the working paper should not be restrictive and that the Committee's mandate was to concern itself with all forms of racial discrimination, not merely contemporary ones. He also shared Mr. Diaconu's opinion that the Committee should concern itself exclusively with racial discrimination and not with other human rights violations.

33. In his view, the Committee on the Elimination of Racial Discrimination should, like the Committee on Economic Social and Cultural Rights, make more extensive use of the procedure of asking a State for further information.

34. He thought that the fourth criterion in paragraph 19 of the working paper was not entirely in line with the requirements of article 4 of the Convention. The Committee should not confine itself to examination of racial violence and racist propaganda by elected or political figures; it should also concern itself with racist organizations.

35. In his view, the situation of the refugees referred to in the fifth criterion should be examined not only in the country of departure, but also the country of arrival.

36. He agreed with Mr. Aboul-Nasr that the Committee's mandate, which was spelt out in article 9 of the Convention, consisted essentially in monitoring the implementation of the Convention. He also agreed with Mr. Aboul-Nasr that the Committee should alert a State party when it considered that the situation in the State risked serious deterioration. He recalled that, three years previously, when the Committee had discussed the report of Yugoslavia, it had expressed a number of concerns, but none of them had appeared in its report or concluding observations. In that case, the Committee had fallen short of its duty.

37. Appointing a special rapporteur to look into the situation of a given country, such as the former Yugoslavia, was not really a new procedure, since the Committee already appointed a rapporteur with responsibility for looking into the situation in countries that did not submit their reports on time.

38. Mr. LAMPTEY congratulated Mr. de Gouttes on his working paper and fully endorsed Mr. Diaconu's comments and proposals.

39. The Committee should never forget that it was the creation of the States that had ratified the Convention and that the limits of its mandate were clearly defined in article 9, paragraph 2, of the Convention. All its initiatives should be strictly in accordance with that mandate. The Committee was different from other bodies such as the Commission on Human Rights, in which sovereign States were represented. Its only links were with the Secretary-General, through whom it spoke, and it could not make recommendations directly to the Security Council. It could therefore deal with political questions only in so far as they related to the Convention.

40. Mr. SHAHI thanked Mr. de Gouttes for his working paper on the prevention of racial discrimination. He shared Mr. Aboul-Nasr's opinion about the need to take concrete action rather than engage in theoretical discussions.

41. As far as the former Yugoslavia was concerned, the Committee must follow the situation in Kosovo and Macedonia very closely. It was an alarming one and it was no accident that the United States of America had warned Yugoslavia about Kosovo and that the Secretary-General had sent observers to Macedonia in a preventive capacity.

42. It would not be advisable to merge early-warning and urgent action measures, which would amount to placing ordinary forms of racial discrimination on the same footing as massive human rights violations, genocides and massacres, such as those which were now being committed in the Balkans and which could only be compared to the Holocaust.

43. He had no very fixed view about the criteria (para. 19). He was not in favour of including the sending of missions (para. 20 (b)) among the early warning measures and would agree to the deletion of that item, as suggested by Mr. Diaconu. What concerned the Committee was emergency measures and the sending of missions was not one. Likewise, informing a State party of the Committee's concern (para. 20 (j)) on considering its periodic report would not be an urgent action measure, since the Committee considered the reports of each State party only every two years. He also did not believe that it was for the Committee to ask the Secretary-General to bring some particular matter to the attention of the Security Council (para. 20 (j) in fine). It would be preferable to use the precise wording of the report of the Secretary-General on the Work of the Organization (A/47/1) in which it was suggested that ways should be explored "of empowering the Secretary-General and expert human rights bodies to bring massive violations of human rights to the attention of the Security Council, together with recommendation for action" (para. 101 in fine). That text could be quoted in paragraph 3 of Mr. de Goutte's working paper or in any other appropriate place.

44. The risk of parallel action by other bodies should not prevent the Committee from taking the measures it considered appropriate: each body should decide for itself what it was appropriate for it to do, within its specific mandate. Human rights violations did, of course come within the purview of other bodies than the Committee, but, in the conflict which had given rise to the current discussion, the violations had an ethnic basis, as "ethnic cleansing" was involved and the Committee was therefore principally concerned.

45. It was perhaps not the Committee's role to put out fires, but, if a fire was raging, the Committee could at least call out the fire brigade. He agreed with Mr. Wolfrum that situations had to be considered in which the cooperation of the parties was lacking: the Committee would in such cases have no choice but to make recommendations to the Secretary-General with a view to possible action by the Security Council. He also agreed with Mr. Wolfrum that it was no longer possible to rule out the competence of human rights organizations in any "matters which are essentially within the domestic jurisdiction of any State" (Art. 2, para. 7, of the Charter of the United Nations). Like Mr. Aboul-Nasr, he thought that the working paper should cover emergency situations both past and future.

46. The Committee could act only on the basis of its consideration of country reports, but it could be mistaken in that consideration. That was certainly what had happened in the case of Yugoslavia: the Committee had considered that country's report a few months previously, but had not drawn the correct conclusions. At present, it was learning some lessons from its errors of judgement and endeavouring to formulate recommendations. He did not think that in so doing the Committee was exceeding its mandate, either in spirit or in letter.

47. Perhaps Mr. de Gouttes might include a reference in the working paper to the decisions taken by the Heads of State at the Summit Meeting of the Security Council (A/47/277), which emphasized the link between human rights, on the one hand, and peace and security, on the other, and also refer to the Secretary-General's suggestion that he and expert human rights bodies should be empowered to bring massive violations of human rights to the attention of the Security Council, a suggestion that the persons chairing the human rights treaty bodies had fully supported in the report on their fourth meeting (A/47/628, para. 37), which had itself been approved by the General Assembly.

48. Mr. FERRERO COSTA said that, on the whole, he endorsed the working paper and thanked Mr. de Gouttes and the Working Group for submitting it. Its proposals seemed well balanced. The fact that the cooperation of the State party was required did not seem to him to be a weakness. On the contrary, it was a balancing factor, which spared the Committee any discussion of the scope of its interventions in the domestic affairs of States.

49. Mr. Lamptey's statement indicated a difference of interpretation in the Committee of the scope of the Convention and the Committee's powers to monitor its implementation. The essential point was whether the Committee wished to give a restrictive or a dynamic interpretation to the Convention. His own view was that the Convention should be interpreted dynamically, without, however, exceeding the Committee's basic mandate, which was to ensure the protection of the individual against racial discrimination. In support of his contention, he would cite article 9, paragraph 2, of the Convention. It must, however, be remembered that the wording of article 9, paragraph 1, was rather broad in scope. In particular, it provided in the last sentence that "the Committee may request further information from States parties". Once a State

was a party to the Convention, the Committee therefore had the right to ask it, at any time, for further information on all acts relating to racial discrimination. The two provisions of article 9 were, moreover, confirmed by various General Assembly and Security Council decisions.

50. Turning to some comments that had been made on specific points in the working paper, he said that he did not think that the scope of the title should be limited by speaking of "contemporary forms" of racial discrimination, "particularly of ethnic origin". Contrary to Mr. Diaconu, he was in favour of maintaining the distinction between early-warning and urgent action measures. The question of the criteria, dealt with in paragraph 19 of the working paper, was, in his view, of crucial importance. However, the criteria stated related essentially to "early-warning" and, in order to achieve balance, other criteria should be formulated for urgent action measures.

51. There were three central issues with regard to the criteria. First, they must be balanced and cover situations liable to occur in both developing and developed countries. Secondly, the criteria applicable to both should have the same scope. The Committee must not be open to the accusation of applying two different weights and measures. The most important question was the third: who was to decide which criteria to apply and when a given case fell within the criteria. If that responsibility was the Security Council's, it would be the States with the right of veto that would decide those matters, in particular the United States of America. The Committee should, therefore, be particularly watchful when it came to the stage of drafting the criteria.

52. As far as the first three criteria in paragraph 19 of the working paper were concerned, he agreed with Mr. Rechetov that a precise reference should be included to intolerance based on racial or ethnic grounds and perhaps to the UNESCO Declaration on Race and Racial Prejudice. As to the fourth criterion, he agreed with the view expressed by other members of the Committee: reference to elected persons or political figures was too restrictive; mention should also be made of individuals and private organizations and to cases of xenophobia and, as Mr. Wolfrum had pointed out, the wording should be based more closely on article 4 of the Convention. The fifth criterion, concerning refugees, should be more explicit, as Mr. Wolfrum had also said, and should mention both the refugees' countries of origin and the host countries. There too, as in the rest of the working paper, it should be made clear that the criteria were applicable when there appeared to be racial discrimination and not, more generally, human rights violations.

53. The criteria relating to urgent action measures should be more precise. The Committee should be able to take urgent action on two criteria: not only the seriousness of the situation, but also its urgency; and perhaps the idea of "massive violation" should be added, as Mr. Shahi had suggested.

54. With regard to the specific measures mentioned in paragraph 20, he attached particular importance to the establishment of a follow-up mechanism (para. 20 (a)), to visiting missions of Committee members (para. 20 (b)) and

to international assistance for the promotion and protection of human rights (para. 20 (g)), but he thought that the content of all the measures should be more precisely stated. He supported all the urgent action measures proposed in paragraph 20 (h) to (j).

55. He also supported Mr. Aboul-Nasr's proposals: the Committee should ask States parties what they were doing to implement the decisions of the Security Council and request the former Yugoslavia to provide it with a report for consideration at its next session. The Committee might make the same request of other countries, such as the Sudan.

56. The Committee should not fear that other bodies might act in parallel: it had a moral obligation and authority based on legal texts and it should intervene in all cases of racial discrimination.

The meeting rose at 1.10 p.m.

CERD/C/SR.975
17 March 1993

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 975th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 12 March 1993, at 3 p.m.

Chairman: Mr. DIACONU

later: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 3.20 p.m.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SEVENTH SESSION (agenda item 2) (continued)

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (GENERAL ASSEMBLY RESOLUTION 47/79);

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION 47/111)

Report of the Working Group on Prevention and Emergency Situations (continued)

Prevention of racial discrimination and related human rights violations, including early warning and urgent action procedures: working paper submitted by Mr. Régis de Gouttes (CERD/C/1993/Misc.1) (continued)

1. Mr. LECHUGA HEVIA said that he fully agreed with the points made by Mr. Lamptey at the preceding meeting and considered that the Committee could give its work greater impetus without going beyond its mandate.

2. The text submitted by Mr. de Gouttes, the Coordinator of the Working Group on Prevention (CERD/C/1993/Misc.1), was in some respects in complete harmony with the Convention, but not in others. For example the suggestion in paragraph 20 (g) that the Committee should take a more active approach in early warning matters was not really within the Committee's terms of reference and the suggestion that the Committee might address recommendations to the United Nations specialized agencies and other bodies with regard to development-related human rights issues might be seen as interference in the internal affairs of States. It was also outside the Committee's mandate to make recommendations to the Secretary-General for transmission to the Security Council; liaison with the Secretary-General would be preferable.

3. Mr. Valencia Rodríguez took the Chair.

4. Mr. SONG Shuhua said that he was generally satisfied with the text submitted by the Working Group and that he agreed with Mr. Lamptey's views on article 9 (1) of the Convention. If the Committee went beyond its mandate, there would be some duplication of effort in the field of human rights. The Committee's task was and should continue to be to consider the reports of States parties. If it identified potential problems, however, it might make recommendations as a contribution to the prevention of human rights violations. Paragraph 20 (b) of the Working Group's text went beyond the Committee's mandate and, in any case, other bodies were involved in such activities.

5. With regard to significant refugee flows, which was the last criterion listed in paragraph 19 of the text, the Committee should take account of the fact that refugees could encounter racial discrimination on their arrival in a new country and the fact that conflicts could also arise when large numbers of refugees arrived at borders.

6. Mr. GARVALOV said that he agreed with the views expressed by Mr. Aboul-Nasr and with the text submitted by the Working Group on Prevention. He had already stressed that the Committee should adopt new approaches, in accordance with its mandate as defined in article 9 (1) and (2) of the Convention. If it had done so, it would have no qualms about requesting additional information from State parties, where appropriate, and it might also have made its position clear on certain issues, such as whether or not the position of a reporting State was acceptable.

7. The situation in the former Yugoslavia was the province of the Security Council, but the situation in Kosovo was very much the Committee's concern, particularly from the point of view of preventive diplomacy and preventive action, on which the Secretary-General had requested the Committee's expertise. It was to be hoped that the Committee would find time to discuss that question at its next session. In the meanwhile, it should bear in mind that many members had expressed serious concern during the consideration of the report of the former Yugoslavia and that some had even said that they were dissatisfied with the answers which the Yugoslav delegation had provided. Because of certain influences and considerations, however, the Committee had not stated its concerns in plain language in its report at the time. If the Committee continued to work in that way, it would be taken for granted by States parties. It should therefore reconsider its mandate seriously in the light of the suggestions by the Working Group.

8. Mr. van BOVEN said that the working paper largely met with his approval, since it contained ideas which would be developed in the course of the Committee's work. The suggestions that had been made would not alter the Committee's mandate, but would provide the impetus for the adoption of innovative procedures, as advocated by the General Assembly. Although paragraph 26 of the report entitled "An Agenda for Peace" (A/47/277) reserved certain elements of early warning action for the Secretary-General's office, that did not mean that the Committee could not be involved in some aspects of such action, as recommended by the meeting of chairpersons in paragraph 44 of its report (A/47/628).

9. The list of criteria contained in paragraph 19 of the Working Group's text was not exhaustive and the first criterion was not clear. Mr. Rechetov's point that the concentration of all power in the hands of one particular race or ethnic group created a potential for conflict was very appropriate and should be added to the list.

10. He suggested that the Working Group's text should refer to the statement made by the Security Council at its January 1992 meeting and reproduced in paragraph 42 of the report of the meeting of chairpersons, (A/47/628) and to paragraph 101 of the report by the Secretary-General to the forty-seventh session of the General Assembly on the work of the Organization (A/47/1),

which stated that ways should be explored of empowering the Secretary-General and expert human rights bodies to bring massive violations of human rights to the attention of the Security Council, together with recommendations for action.

11. As far as recommendations were concerned, it might be more appropriate for the Committee to communicate with the Secretary-General rather than with the Security Council direct.

12. Ms. SADIQ ALI said that she supported the text by the Working Group in general and endorsed the emphasis Mr. Aboul-Nasr has placed on the need for pragmatic action. She also supported Mr. Shahi's suggestion that parallel action could be used to exert pressure on violating States and Mr. Wolfrum's comments on refugees and the need for two-way cooperation with reporting States.

13. Mr. Garvalov had raised the question of the need for the Committee to be more forthright in its reports. The Committee would be defeating its purpose if it continued to try to shield States parties by pandering to their susceptibilities and watering down its reports, as it had done in the past. Considerable improvement in its reporting methods would be essential if it was to become involved in early warning action.

14. Mr. YUTZIS said that he had taken part in the work of the Working Group on Prevention and wished to draw attention to innovative procedures that the Committee might adopt while still staying well within its mandate. He thus hoped to dispel any doubts about the Working Group's text, which, as it stood, was far from suggesting any action which was outside of the scope of the Committee's mandate.

15. Under article 9 (2) of the Convention, the Committee could make suggestions and general recommendations based on the examination of the reports and information received from the States parties. The exact procedure was not specified and it was up to the Committee to decide what was appropriate in each particular case, within the scope of the Convention. Under article 9 (1), the Committee could, as needed, request further information from States parties; there again, the exact manner of doing so was not specified. He stressed that his was certainly not the only possible interpretation of the Convention; however, he found it unacceptable that any Committee member should claim to have the single correct interpretation.

16. The report of the fourth meeting of persons chairing the human rights treaty bodies (A/47/628) was also relevant. The chairpersons had recommended that the treaty bodies should give further consideration, as appropriate, to the subject of how violations of human rights could be effectively prevented. They had considered that it was appropriate for each treaty body to undertake an urgent examination of all possible measures that it might take, within its competence, to prevent human rights violations from occurring and to monitor more closely emergency situations. Where procedural innovations were required for that purpose, they should be considered as soon as possible. The chairpersons had also considered that it might be appropriate for a member of one of the treaty bodies to be included as part of the commission of experts

appointed pursuant to Security Council resolution 780 (1992) to consider evidence of grave breaches of international humanitarian law in the territory of the former Yugoslavia. In extending such invitations, the chairpersons had been well aware of the scope and limitations of the mandates of the various treaty bodies concerned; they would certainly not invite treaty bodies to take any action outside the scope of their mandates.

17. Several other important texts referred to action by treaty bodies and, in each case, they had been drafted with a full awareness of the scope and limitations of the relevant mandates. They included General Assembly resolution 47/111 on the effective implementation of international instruments on human rights, which referred to the participation of the treaty bodies in activities relating to early warning and preventive diplomacy and the role of the members of the treaty bodies in identifying potential areas of future conflict; and document E/C.12/1992/4 of the Committee on Economic, Social and Cultural Rights, in which it had been reported that, for its pre-sessional working group, the Committee had requested the Secretariat to make available the services of an expert for each report it was to consider and had requested all bodies concerned to provide any relevant documentation to the Secretariat. All of those suggested procedures and innovations were worthy of the Committee's attention and might be relevant to the Working Group's text currently under consideration.

18. Mr. LAMPTEY said he doubted that any member of the Committee was claiming that his was the unique interpretation of the Convention; each member was free to express his own views on that matter.

19. He had never suggested that the Committee should not be dynamic in interpreting the Convention. In fact, he fully endorsed the amendments to the Working Group's text suggested by Mr. Diaconu. He also had no objection to the suggestion that the Committee should include in that text the statement made at the January 1992 Security Council meeting. However, he did not believe that under its mandate, the Committee could recommend to the Secretary-General that a particular matter should be brought to the attention of the Security Council; he was consequently firmly opposed to the inclusion of any statement to that effect in the Working Group's text.

20. It had been claimed that the Committee had not acted courageously enough at the time of its consideration of the report of the former Yugoslavia. In his view, the Committee had acted properly. It was a committee of experts, not a political committee. Its purpose was to persuade States to eliminate racial discrimination and to show them what other States had done in that regard. When necessary, it could draw the attention of the General Assembly to any extreme cases of discrimination.

21. He agreed with Mr. Aboul-Nasr that the Committee's general recommendations must be based on the reports of various States parties and should be general in scope. He was certainly not opposed to the Committee taking current events into account, but it should bear in mind the limits of its mandate when considering whether to request further information from a particular State party.

22. Mr. ABOUL-NASR said he agreed with Mr. Lamptey that the Working Group's text should not contain any statement to the effect that the Committee might make recommendations to the Security Council; any recommendations should be addressed to the General Assembly through the Secretary-General, as provided for in the Convention.

23. Mr. Lamptey's other objections were so general in nature that it was hard to see exactly in what way the Committee might be departing from its mandate.

24. He, Mr. Banton, Mr. Garvalov and Mr. van Boven had submitted a draft decision, which read:

> "In view of recent reports of ethnic conflict within the Federal Republic of Yugoslavia (Serbia and Montenegro), and in accordance with rule 65 of its rules of procedure relating to the provisions of article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination requests further information by 31 July 1993 from the Government on the implementation of the Convention within its territory.
>
> The Committee on the Elimination of Racial Discrimination decides that at its forty-third session it will review the eighth and the tenth reports of Yugoslavia submitted and considered in 1985 and 1990 and the Committee's consideration of them to see whether any lessons can be learned about the processes generating ethnic conflicts and about the ways in which the Committee can react to signs of increasing tension."

25. The first paragraph was based on the concept of preventive diplomacy, as well as on the Committee's mandate, under article 9 of the Convention, to request further information from States parties. In that paragraph, the Committee would decide, in view of recent reports of ethnic conflict within the Federal Republic of Yugoslavia, to request further information from the Government on the implementation of the Convention within its territory. In the second paragraph, the Committee would decide to review the eighth and tenth reports of Yugoslavia at its forty-third session.

26. He firmly believed that the issue of ethnic cleansing came within the Committee's mandate. If it did not take action in that sphere, it would be failing in its duty. He stressed that the Committee was not acting as a tribunal, but simply investigating the situation, which it was bound to do, when a serious threat to human rights existed, as was the case in the territory of the former Yugoslavia.

27. He hoped that the Committee would adopt the draft decision by consensus by the end of the current meeting.

28. The CHAIRMAN suggested that a small open-ended working group should be set up to review the text submitted by the Working Group on Prevention.

29. Mr. FERRERO COSTA suggested that the Committee might adopt the Working Group's text at the current meeting, apart from certain specific points which could be decided on later. Some members would be leaving Geneva soon and the Committee might not have a quorum to take decisions the following week. The remaining points of contention seemed to be the following. First, the title of the working paper should be a broad one, not limited to contemporary forms of human rights violations. Secondly, some members had said that the last two subparagraphs of paragraph 19 should be amended. Thirdly, Mr. Lamptey and Mr. Lechuga Hevia had expressed doubts about paragraph 20 (g) which might be dispelled if the second sentence was deleted. Fourthly, in paragraph 20 (j), Mr. Lamptey and Mr. Aboul-Nasr had objected to the reference to the Security Council, which could, in his own opinion, simply be deleted. Lastly, Mr. Diaconu had objected to the reference by name of areas of current conflict, but he was not sure how much support that objection had attracted. Those specific points could be decided by a vote, if necessary.

30. Mr. LAMPTEY said that he had no objection to the Committee bringing matters to the attention of the specialized agencies; it was only the reference to the Security Council which concerned him. The Committee could not adopt the Working Group's text unless it had the proposed changes in writing. Either a working group or Mr. de Gouttes himself could revise the draft by the next meeting, when the Committee should still have a quorum.

31. Mr. SHAHI said he agreed that the Committee should adopt the text at the current meeting, if possible. In his opinion, the reference to the Security Council should be retained, although a vote on that issue might be necessary. It was essential that the Committee should be able to bring matters to the attention of the Security Council. Otherwise, its concerns would merely be reflected in its annual report, which would not be considered until the following General Assembly. That could hardly be considered urgent action. If the situation was really urgent, it would be beyond the powers of the Committee to do anything about it and the matter must be referred to a higher authority as soon as possible. Such a measure surely came within the Committee's terms of reference. He also considered that there was a need to refer to non-military sources of instability in various fields, which might threaten peace and security.

32. Mr. DIACONU said that a small working group should be set up to revise the Working Group's text. If the text was put to the vote at the current meeting, he, for one, would not vote in favour of it. The most important part was the description of possible early warning measures and urgent action measures contained in paragraph 20; everything before that was merely a preamble, laying down the criteria for action by the Committee. Such criteria would be the same whether a case was urgent or not and they were simply not needed in the present text. In any case, it would take the Committee a long time to agree on a list of criteria acceptable to all members. A working group should revise the text and try to arrive at a version which could be adopted by consensus.

33. Mr. de GOUTTES said that there seemed to be a consensus on most of the text, except for the few points listed by Mr. Ferrero Costa. If the text was to be revised either by himself or by a working group, it would not be ready for consideration at the next meeting. Moreover, he could foresee that the early warning and urgent action measures, which Mr. Diaconu wanted adopted immediately, would cause the most discussion. He therefore suggested that the first part of the text, which listed a range of possible methods for approaching emergency situations, should be revised and adopted before the end of the current session, since it would be a valuable source of guidance for the Committee's future work. To meet the Committee's more immediate concerns, a request for additional information under article 9 (1) of the Convention could be sent in respect of the former Yugoslavia, as suggested by Mr. Aboul-Nasr.

34. Mr. DIACONU said that the Committee could certainly not adopt the text as it stood, as it did not contain any clear recommendations for action. Phrases such as: "the Committee could include ..." or "greater cooperation could be developed ..." showed that the Committee was not actually taking a decision at all, but merely stating that a decision would have to be taken in every separate case.

35. Mr. FERRERO COSTA suggested that the Committee should vote on the two proposals made by Mr. de Gouttes and Mr. Diaconu.

36. Mr. de GOUTTES suggested that, if the Committee wished to vote on the text, then it should vote separately on what appeared to him to be the three most contentious points, namely, appeals by the Committee to the Security Council, the appointment of a special rapporteur for urgent situations and visiting missions by Committee members, and then on the text as a whole. Otherwise, the whole document would have to be revised, and that would take several days.

37. Mr. LAMPTEY said that there seemed little point in voting on the text if it was going to be revised later. It was essential to have a written text to work from and he thought that it must be possible for a revised version to be made available by the next meeting, when most members would still be present.

38. Mr. YUTZIS, speaking on a point of order, said that the Committee had discussed the issue long enough. He agreed with Mr. de Gouttes that the text would provide valuable guidance for the Committee in deciding on its working methods and thought that it should be put to the vote straight away.

39. Mr. RECHETOV, speaking on a point of order, said that the Committee was heading towards a hasty decision on what was possibly one of the most important documents it had ever produced, just because it might not have a quorum for the final week of the session. Surely the rules of procedure could be amended to provide for such a case? Major amendments to a text should be submitted in writing and given due consideration: the Committee must know exactly what it was adopting.

40. Mr. DIACONU, speaking on a point of order, said that, if the Committee was to vote on the measures listed in paragraph 20, he would propose that subparagraph (d) should be deleted, since it duplicated subparagraph (g). In addition, he had an amendment to propose to subparagraph (h).

41. Mr. SHAHI said that, if a vote was to be taken on the text, he would propose once again that additions should be made following paragraphs 2 and 3 of section II.

42. The CHAIRMAN said that, in that case, it would be better if the Committee voted on the entire text paragraph by paragraph.

43. Mr. LAMPTEY said he did not see any need for a vote. The Committee would be making itself ridiculous by voting on a report by its own working group. If a vote was taken, he himself would not participate in it.

44. Mr. ABOUL-NASR said that he shared that view. It should be left to the Working Group to redraft the text so that the Committee could then adopt it by consensus. He did not intend to take part in the vote.

45. Mr. de GOUTTES said that he was quite willing for the text to be voted on, but feared that that might not be possible owing to the lack of time. If there were objections to voting, however, he would suggest that the Committee should adopt the Chairman's original proposal that the task of amending the text should be left to a small working group, so that the Committee could then adopt it by consensus.

46. Mr. SHAHI said that he supported that suggestion. It was important that Mr. Lamptey and Mr. Aboul-Nasr should participate in any vote that was taken.

47. He suggested that section III, which was not essential to the report, could be omitted.

48. Mr. van BOVEN said he agreed that the Committee should aim for a consensus on the paper. It had been suggested that parts of the introduction, as well as section III dealing with the procedures of other treaty bodies, should be deleted, but he considered that they provided useful background information and should be retained.

49. The CHAIRMAN said he understood that it was the wish of the Committee that a working group should be set up, consisting of Mr. de Gouttes, Mr. Diaconu, Mr. Shahi, Mr. Ferrero Costa and Mr. Aboul-Nasr. All members of the Committee should transmit their proposals for amendments to the group, which would meet in the afternoon of Monday, 15 March 1993.

50. Mr. ABOUL-NASR suggested that the Committee could now adopt by consensus the draft decision introduced earlier, with the deletion of the second paragraph, and with the words "Serbia and Montenegro" in the first paragraph amended to read "Serbia/Montenegro". There should be no difficulty in reaching agreement on the text, which amounted to a simple request for further information.

51. Mr. RECHETOV said he had a draft decision of his own to propose, which he would like to be considered on an equal footing with the one submitted by Mr. Aboul-Nasr. The two draft decisions could then be put to the vote.

52. His proposed draft decision would read:

> "In view of recent reports of ethnic conflict within the territory of the former Yugoslavia and in accordance with rule 65 of its rules of procedure relating to the provision of article 9, paragraph 1, of the Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination requests further information by 31 July 1993 from the Governments of the Federal Republic of Yugoslavia (Serbia/Montenegro/Croatia and Slovenia) on the implementation of the Convention within their territories.
>
> The Committee trusts that the Government of Bosnia/Herzegovina has given attention to the possibility of notifying its succession to treaty obligations under the Convention on the Elimination of All Forms of Racial Discrimination and, if it will proceed accordingly, the Committee requests further information by 31 July 1993 from the Government of Bosnia/Herzegovina on the implementation of the Convention within its territory."

53. Mr. SHAHI said that he could support the first draft decision submitted by Mr. Aboul-Nasr, on the understanding that the words "within its territory" in the first paragraph were intended to refer to Kosovo.

54. Although he had no objection in principle to the draft decision proposed by Mr. Rechetov, he thought it was somewhat unrealistic to ask the Government of Bosnia and Herzegovina to report on the implementation of the Convention in the light of the tragic and chaotic situation that currently prevailed in the region.

55. Mr. ABOUL-NASR requested that the Committee should vote first on his own proposal and, secondly, on that of Mr. Rechetov. He intended to vote against the latter, which, in his view, confused the issue by raising complex legal problems regarding the succession of States.

56. Mr. van BOVEN said he was not yet ready to proceed to a vote. Whereas the first draft decision was a relatively simple one, the one proposed by Mr. Rechetov had some implications which the Committee should be allowed time to consider further. While he was basically sympathetic to the idea that all parts of the former Yugoslavia which had obligations under the Convention should be requested to report on how the Convention was being implemented, he did not think that the Committee should have to vote on the proposed texts at such short notice.

57. Mr. BANTON pointed out that it had never been intended that the second paragraph of the first draft decision should be sent anywhere: it was merely meant as a reminder to the Committee of the reasons why it would be reviewing the eighth and tenth reports of Yugoslavia at its next session. He hoped that the deletion of the paragraph would not mean that the Committee would go back on its earlier intention of conducting that review at its August 1993 session.

58. Mr. LAMPTEY said that he supported the original draft decision submitted by Mr. Aboul-Nasr and would be prepared to vote on it at a later stage.

59. With regard to the draft decision proposed by Mr. Rechetov, he pointed out that Slovenia and Croatia were now parties to the Convention and could thus be asked to submit a report. However, Bosnia and Herzegovina, or its successor States, were not yet parties to the Convention and should thus be asked to indicate their intentions in that regard. He suggested that Mr. Rechetov should reflect further on his draft decision and submit an amended version to the Committee at a later stage.

60. Mr. YUTZIS said that the Committee had to have the written texts of the two draft decisions in the various working languages if it was to be in a position to reach a decision.

The meeting rose at 6.10 p.m.

CERD/C/SR.976
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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 976th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 15 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.976/Add.1

The meeting was called to order at 10.25 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)

1. The CHAIRMAN announced that the Committee had before it two draft general recommendations proposed by Mr. Banton, one relating to the effectiveness of the measures taken by States parties to protect persons against acts of racial discrimination and the other to State policies to eliminate all forms of racial discrimination.

2. Mr. BANTON pointed out that the Committee also had before it several other draft recommendations: a draft by Mr. Diaconu on the situation arising from a reference made by a State party in its report to the situation in the territory of another State; a draft by Ms. Sadiq Ali on the training of law enforcement officials; a draft by Mr. Rechetov on succession of States in respect of treaties and the assumption by the successor State of the obligations entered into by the predecessor State under human rights instruments; two other drafts relating to articles 1 and 4 of the Convention, respectively; and a draft by Ms. Sadiq Ali on national human rights defence commissions.

Draft general recommendation on effectiveness (continued)*

3. The CHAIRMAN invited Mr. Banton to introduce his draft general recommendation on effectiveness.

4. Mr. BANTON said that he was proposing the draft general recommendation in question because, in their reports, States generally did not give enough information showing that the measures which they were taking to combat racial discrimination were effective within the meaning of article 7 of the Convention. The draft general recommendation consisted of four paragraphs, preceded by an introduction intended only for the members of the Committee.

5. Mr. ABOUL-NASR said he was afraid that the persons who drafted the reports of States parties would have some difficulty in understanding the recommendation if even the members of the Committee needed an introduction in order to do so. Far from helping the persons who drafted reports, the recommendations adopted by the Committee, of which there were too many, might on the contrary complicate their work, particularly in the case of small third world countries where one or two persons were responsible for drafting all the reports which those countries had to submit to different bodies.

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* Resumed from the 969th meeting.

6. In conclusion, he proposed that the Committee should prepare a single document, both clear and comprehensive, containing not only all the general recommendations adopted by the Committee since its establishment, but also the guidelines for the form and content of reports.

7. Mr. van BOVEN said he agreed with Mr. Aboul-Nasr that the work of States parties must be facilitated and not made more complicated. The Committee should therefore continue to adopt general recommendations, since it was sometimes necessary to clarify certain provisions of the Convention and to clear up certain misunderstandings. The general recommendation on non-nationals might prove to be very useful in that respect. In September 1992, the secretariat had published a document containing a recapitulation of the general comments or recommendations adopted by human rights treaty bodies (HRI/GEN/1). That document showed that the other treaty bodies were also finding it necessary to adopt general recommendations and that, allowing for the longer period of time for which it had been operating, the Committee on the Elimination of Racial Discrimination had not adopted more recommendations than they had.

8. Such recommendations could be useful not only to States parties, but also to all persons and all bodies interested in the Convention, particularly to nationals of States which had made the declaration provided for in article 14 of the Convention.

9. Mr. DIACONU said that a general recommendation on the effectiveness of the measures taken by States parties to implement the Convention was needed, but Mr. Banton's draft should be made more concise and clear. States parties should also be given more freedom as to the choice of steps to be taken to increase that effectiveness. He accordingly proposed that the end of the second sentence of paragraph 3 of the draft recommendation, as from the words "if possible", and the end of paragraph 4, as from the words "if possible", should be replaced by the words "by all means at their disposal, as appropriate".

10. Mr. WOLFRUM pointed out that the large number of draft general recommendations before the Committee at its present session might be the result of the fact that, at preceding sessions, it had adopted relatively few and somehow had to fill in certain gaps.

11. He, too, considered that all the recommendations should be brought together in a single document and classified in the same order as the articles of the Convention.

12. He fully supported the draft recommendation proposed by Mr. Banton; if an attempt was made to condense recommendations too much, they might be more difficult to understand.

13. Mr. SHAHI thanked Mr. Banton for preparing his draft recommendation, which should, however, be shortened and simplified.

14. Paragraph 2 could be deleted and paragraphs 3 and 4 amended as proposed by Mr. Diaconu. However, the words "including consultations with those groups for whom the protections are intended" should be added after the words proposed by Mr. Diaconu.

15. Even if it was true that many States would take no more notice of the general recommendations than of the guidelines for the content of reports, the Committee had a duty to adopt them, if only for those States parties which would take them into consideration.

16. Mr. BANTON said he realized that his draft recommendation on the effectiveness of the measures taken by States to combat racial discrimination could give rise to difficulties, as Mr. Aboul-Nasr had stated. However, those difficulties were not insurmountable. The Convention itself was not always easy to understand. The scope of some articles was much broader than was apparent at first sight; it was therefore necessary for the Committee to adopt general recommendations.

Draft general recommendation on State policies

17. The CHAIRMAN invited Mr. Banton to introduce his draft general recommendation on State policies to eliminate racial discrimination.

18. Mr. BANTON acknowledged that paragraphs 3 and 4 of the draft general recommendation overlapped with the guidelines for the form and content of reports. They could therefore be amended, but they could not be deleted, since they contained essential elements.

19. He also pointed out that, if the general recommendations were regrouped article by article, it would then be necessary to review the relationships between the recommendations and the guidelines.

20. Mr. DIACONU said that paragraphs 2, 3 and 4 of the draft general recommendation did not clearly bring out the difference between policy and legislation. Although, according to paragraph 2, the policy to be adopted by States in order to combat racial discrimination must describe the responsibilities of particular ministries and institutions, those same responsibilities must also be laid down by law. Furthermore, the definition of punishable acts, which, according to paragraph 3, must be included in the policy, was also a matter for the Penal Code. In order to avoid such confusion between political and legislative measures, he proposed that the Committee should adopt more general wording reflecting the need for State policy to combat racial discrimination to be expressed in the laws required to implement it.

21. In addition, it would be necessary to delete paragraph 4, which merely contained a list of human rights.

22. In paragraph 6, the words "national commissions for human rights" should be replaced by the words "national commissions and institutes for human rights".

23. Mr. SHAHI said that it was his understanding that Mr. Banton intended to recast paragraphs 3 and 4 of his draft general recommendation. What changes was he thinking of introducing?

24. Mr. SONG Shuhua said that he, too, considered that the distinction between policy and legislation was not brought out very clearly in paragraphs 3 and 4 of the draft general recommendation. Furthermore, some countries submitted core documents in addition to their periodic reports - an aspect that deserved to be mentioned in the draft recommendation.

25. The Committee's general recommendations had reference value and no binding force. For example, in the past, the Committee had adopted a recommendation according to which an individual's nationality was that with which he identified himself. Such a recommendation would be very difficult to apply in China, where it was not uncommon for individuals to identify themselves successively, for one reason or another, with different nationalities.

26. The Committee had prepared many general recommendations, and that was a sign of greater precision in its methods of work. It should, however, take care not to try to impose a burden on States parties by adding to the obligations which they had already contracted.

27. Lastly, he proposed that the different recommendations should be classified by category.

28. Mr. ABOUL-NASR requested Mr. Banton to explain in what way the rights listed in paragraph 4 of his draft general recommendation differed from those referred to in article 5 of the Convention.

29. Since article 2, paragraph 1, of the Convention committed States to "pursue ... a policy of eliminating racial discrimination in all its forms ...", he was not sure whether it would be realistic for all treaty bodies and human rights instruments to recommend that States parties, particularly developing countries, should adopt a separate policy depending on the instrument in question.

30. Mr. FERRERO COSTA said that, in paragraph 1 of the draft general recommendation, the words "of its policy" should be replaced by wording which reflected a multiplicity of policies.

31. He would support the unconditional deletion of paragraph 4, whose content seemed to be more restrictive than that of article 5 of the Convention.

32. In paragraph 3, which referred to article 4 of the Convention, a distinction should be made between policy and legislation.

33. If his proposal to delete paragraph 4 was accepted, the words "in the fields listed above" in the first sentence of paragraph 5 would need to be replaced by the words "in all fields". He proposed that, in the last line of paragraph 5, the words "forms part of" should be replaced by the words "could form part of".

34. Mr. ABOUL-NASR, commenting on paragraph 4, said that he preferred the way in which human rights were set forth in the Universal Declaration of Human Rights and the International Covenants on Human Rights - namely, in two groups, civil and political rights, on the one hand, and economic, social and cultural rights, on the other.

35. Mr. GARVALOV said that, as he understood it, the words "to pursue ... a policy of eliminating racial discrimination in all its forms ... " (art. 2, para. 1, of the Convention) meant implementing, through domestic law and other appropriate legal means, a policy for the elimination of all forms of racial discrimination. The wording of the Convention thus gave States full freedom as to how they described their practices and policies, whereas the draft general recommendation imposed further obligations on them. In that respect, he did not think that there was much point in preparing a general recommendation on the implementation of article 2 of the Convention.

36. Endorsing the opinion expressed by Mr. Aboul-Nasr, he said he feared that, if such a general recommendation was to be interpreted as imposing further obligations on States parties, it would amount to requiring the latter to give a separate description of all their human rights policies for each instrument concerned.

37. Mr. BANTON said that the wording of paragraphs 3 and 4 of his draft general recommendation gave rise to a problem which he was for the moment unable to solve. He would therefore welcome any suggestion that might remove the difficulty.

38. He also pointed out that one of the aims of the general recommendation was to urge States parties to give more thought to their objectives in the campaign against racial discrimination and to ways and means of achieving them. Poor countries were particularly affected by such recommendations in so far as they would be encouraged to specify their objectives and to make optimum use of the limited resources available to them for their achievement.

Draft general recommendation on the succession of States

39. The CHAIRMAN invited Mr. Rechetov to introduce his draft general recommendation on the succession of States.

40. Mr. RECHETOV said that international humanitarian law required universal participation in the major human rights instruments and that, even if there was no specific rule to that effect, its application brooked no interruption. However, it was disturbing to note that the scope of application of the Convention had been considerably narrowed, especially in the territory of the former Soviet Union, where only 6 out of the 15 republics which had constituted the USSR had declared themselves to be bound by the human rights obligations which the Soviet Union had assumed. That state of affairs could perhaps be rectified by inviting successor States to declare themselves bound by the obligations stemming from predecessor States' acceptance of the International Convention on the Elimination of All Forms of Racial

Discrimination. To be sure, the implementation of some provisions of the Convention in territories ravaged by war or ethnic conflicts could pose problems, but the Committee had a duty to remind the States concerned of the principle of the universality of the Convention.

41. The CHAIRMAN suggested that the consideration of the draft general recommendation should be suspended so that work on communications (agenda item 5) could be resumed at a closed meeting.

42. It was so decided.

The meeting rose at 11.45 a.m.

CERD/C/SR.978/Add.1
5 August 1993

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 978TH MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

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* The summary record of the first part (closed) of the meeting appears as document CERD/C/SR.978.

The meeting was called to order at 11.55 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)

Draft general recommendation on the succession of States (concluded)*

1. The CHAIRMAN recalled that the draft general recommendation under consideration had been introduced by Mr. Rechetov at the Committee's 976th meeting.

2. Mr. DIACONU welcomed the draft general recommendation submitted by Mr. Rechetov, whose text was a timely complement to Commission on Human Rights resolution 1993/23 concerning succession of States in respect of international human rights treaties.

3. Mr. WOLFRUM and Mr. FERRERO COSTA unreservedly endorsed the draft general recommendation.

4. The CHAIRMAN said he took it that the members of the Committee wished to adopt by consensus the draft general recommendation on the succession of States.

5. It was so decided.

Draft general recommendation on the implementation of article 9 of the Convention

6. Mr. DIACONU, the author of the draft, said that the text concerned neither the overall content of reports nor the implementation of the Convention, but the subject matter of reports, which should not refer to the implementation of the Convention in any country other than the country in question.

7. Mr. FERRERO COSTA said he was unable to give his views on the draft as it was available only in French. He was surprised that the text had not yet been translated into English.

8. Mr. WOLFRUM endorsed the draft general recommendation, which faithfully reflected a line of conduct followed by the Committee in the past, i.e. the rejection of any allegation from a State party concerning the implementation of the Convention in another State party.

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* Resumed from the 976th meeting.

9. Mr. BANTON also approved the draft submitted by Mr. Diaconu. In reply to Mr. Wolfrum, he pointed out that there had been occasions when a State had infringed that principle without the Committee objecting.

10. Mr. RECHETOV, too, supported the draft general recommendation submitted by Mr. Diaconu. However, he wondered what measures the Committee might take if a country failed to comply with the recommendation, should it be adopted by the Committee. He suggested that the Chairman of the Committee should in that event instruct the Secretariat directly to request the State concerned to withdraw the allegation.

11. Mr. SHAHI, agreeing with Mr. Ferrero Costa's remarks, requested that the text submitted by Mr. Diaconu should be translated orally.

12. At the request of the Chairman, Mr. Diaconu read out his draft general recommendation for the interpreters to translate.

13. Mr. DIACONU, commenting on Mr. Rechetov's suggestion, said that the Secretariat was not empowered to ascertain whether States parties were complying with the various general recommendations adopted by the Committee over the years; that was a task for the Committee itself to perform.

14. Ms. SADIQ ALI regretted that the text of the draft was not available in English and said that, as a result, she would not take part in its consideration.

15. Mr. de GOUTTES thanked Mr. Diaconu for his draft general recommendation, whose principal merit was that in paragraph 4 it drew attention to article 11 of the Convention. However, he suggested that in paragraph 2 the term "human rights" should be replaced by "racial discrimination". Furthermore, he thought that it was necessary to take account of minorities that were scattered over the territories of several countries; such situations occasionally led the Committee to put questions that went beyond the framework of a State's report. It was necessary to take account of those minorities, such as the Roma, whose way of life led them across frontiers. Moreover, it should be understood that the recommendation would be addressed to States parties, not to the Committee, which should remain free to put questions on events in a State other than the State whose report was being considered.

16. Mr. FERRERO COSTA said it was regrettable that Mr. Diaconu's draft general recommendation was available only in French. It would have been preferable for it to have been translated into the other official languages. Regarding the substance of the text, he thought that it was not sufficient to refer to the "territory" of States parties; there were also territories whose status was, for example, intermediate. It would be preferable to refer to the jurisdiction of States parties. Moreover, that wording was already employed in the Convention, article 3 of which referred to "territories under their jurisdiction" and article 6 to "everyone within their jurisdiction".

17. The CHAIRMAN also regretted that the text of Mr. Diaconu's draft general recommendation had been circulated in only one working language. However, it should be borne in mind that the previous week the Commission on Human Rights,

which had met up to four times a day, had given the Secretariat an extra burden of work. Moreover, he pointed out that other draft recommendations had been circulated in English only, but that had not prevented the Committee from considering them.

18. Mr. RECHETOV supported Mr. Diaconu's draft. In response to Mr. de Gouttes' concern not to restrict the Committee, he pointed out that there were three stages in the submission of reports by States parties: the written report itself, an introductory statement by the delegation and further information submitted by the delegation in writing. The restriction proposed by Mr. Diaconu should only apply to the actual reports; it should be possible for the further information requested to extend to situations beyond a country's frontiers. Moreover, he acknowledged the justification for the wording proposed by Mr. Ferrero Costa, for example in a situation such as that of the territories occupied by Israel.

19. Mr. DIACONU, taking into account the observations made by the members of the Committee, put forward the following amendments to his text: at the end of paragraph 1 the words "the situation in its territory" should be replaced by "the situation in the territory under its jurisdiction"; in paragraph 2, the words "human rights" should be replaced by "racial discrimination"; in paragraph 3, the words "their reports" should be replaced by "the written reports submitted by them" and the words "the territory under their jurisdiction" should be inserted at the end of the paragraph.

20. Regarding the language of submission of documents, he pointed out that French had the same status as English.

21. Ms. SADIQ ALI said she understood the concern expressed by Mr. de Gouttes with regard to transfrontier situations; she noted that such situations were numerous and were not limited to Europe. For example, in Africa many ethnic groups lived in several nations as a result of territorial divisions inherited from colonialism. She cited the case of Rwanda, one of whose ethnic groups was also to be found in Tanzania and Uganda.

22. Mr. de GOUTTES pointed out that, if the Committee had not been willing to consider texts in a single language, it would have been unable to work since the beginning of its session: the texts of recommendations and even the reports of working groups had been circulated in English only. As coordinator of the Working Group on Prevention, he had himself had to submit a report in English. Ideally, texts should be submitted in all working languages; if that were not possible, efforts should be made by all, and not just in one direction.

23. Mr. WOLFRUM remarked that as it was not possible to distribute some texts in all working languages, it was preferable for the Committee to use a language that all its members understood; all of them understood English but not French.

24. As far as the substance of Mr. Diaconu's draft general recommendation was concerned, it contained a reference to article 9 of the Convention, which stated that States parties undertook to submit "a report on the legislative,

judicial, administrative or other measures which they have adopted". That definition of the content of reports hardly allowed States to refer to the situation in other States. If they wished to address the situation of an ethnic group living in more than one country, they should only do so with reference to their own jurisdiction. Otherwise, for example, Germany could refer to the million persons of German origin living in Chile, some of whom had kept German nationality. However, States parties could, under article 11, which was also mentioned in the draft recommendation, draw attention to violations of the Convention in other States parties. So far no such action had been taken, but it should be encouraged.

25. Mr. GARVALOV said he was particularly favourable to the draft general recommendation as the situation it sought to avert had already occurred on several occasions. He agreed to the amendments read out by Mr. Diaconu himself. However, he thought that at the end of paragraph 2 the words "States parties" were preferable to "countries", so as to avoid giving the impression that States that were not parties were involved. The situation with which Mr. Diaconu was concerned had arisen, *inter alia*, in connection with Cyprus, Israel and Lebanon. However, he noted that no complaint had been made under article 11 in respect of any of those countries. He agreed with Mr. Wolfrum that it would be desirable for States parties to take such an initiative. Lastly, he drew attention to the problem that could arise if, for example, Bosnia did not become a party to the Convention and a neighbouring State complained of discrimination there.

26. The CHAIRMAN noted, firstly, that the members of the Committee regretted that Mr. Diaconu's draft general recommendation had been circulated in only one language, and, secondly, that the Committee lacked a quorum. He suggested that it should resume consideration of the draft when it had been circulated in other languages. That would give Mr. Diaconu time to make the amendments requested and to submit a final text.

The meeting rose at 12.55 p.m.

CERD/C/SR.979
22 March 1993

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 979th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 March 1993, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)*

Fifth, sixth and seventh periodic reports of Jamaica (CERD/C/117/Add.4)

1. The CHAIRMAN invited the Committee to review the implementation of the Convention in Jamaica, whose eighth, ninth, tenth and eleventh periodic reports were overdue. The eleventh periodic report had been due in July 1992. The Committee might wish to base its review on its consideration of the last reports submitted by Jamaica, namely, the fifth, sixth and seventh periodic reports, submitted in one document (CERD/C/117/Add.4) in December 1984 and considered by the Committee in 1985 (CERD/C/SR.741-742).

2. At the invitation of the Chairman, Mr. Pierce (Jamaica) took a place at the Committee table.

3. Mr. PIERCE (Jamaica) said that, when a representative of his country had presented Jamaica's fifth, sixth and seventh periodic reports (CERD/C/117/Add.4) to the Committee in August 1985, he had stated that the Government intended to adopt legislation to implement article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, thus allowing the Government to withdraw its reservation to that article. However, the Government had since decided not to adopt specific legislation, but to consider amending section 24 of the Constitution so as to take the Convention into account. The Constitutional Review Committee was still considering that amendment and, accordingly, the reservation to article 4 of the Convention was still in force. He hoped that, at its next appearance before the Committee, his country would be able to report that the Constitution had been amended and update the information contained in the last report.

4. Ms. SADIQ ALI thanked the Jamaican representative for coming before the Committee, although he had had little to report. She hoped that Jamaica would soon take measures to implement article 4 of the Convention, which was a very important article and one which was, moreover, binding on States parties. Jamaica had given little tangible proof of its commitment to the Convention as yet, particularly since four periodic reports were now outstanding. The Committee might wish to base its consideration of the implementation of the Convention in Jamaica on the fifth, sixth and seventh periodic reports (CERD/C/117/Add.4), prepared with the assistance of the United Nations Institute for Training and Research. The combined report had been prepared according to the Committee's guidelines, although some members had asked for more details about the implementation of article 5 of the Convention.

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* Resumed from the 972nd meeting.

5. Members had raised a number of questions about the report. An annex gave details of demographic trends between 1960 and 1970: the 1970 total accounted for 99.1 per cent of the population, but members had asked about the remaining 0.9 per cent. The negro/black group of the population had risen from 76.8 per cent in 1960 to 90 per cent in 1970 and members had asked for that group to be broken down into further sub-groups if possible. Another member had questioned the low figures given for the East Indian and Amerindian populations.

6. The representative of Jamaica had answered that, as a result of the "black pride" movement of the 1960s, many mixed-race people might now be calling themselves black. The data were based on people's own identification of their racial group, a principle of which the Committee approved. There had been no large-scale population movements. There had been relatively few East Indians - persons from the Indian subcontinent - in Jamaica compared with other former British colonies and the population had remained fairly constant, except for a sudden and unexplained rise in 1960.

7. The representative had said that the Amerindian population of Jamaica had quickly died out because of forced labour and diseases brought in by Europeans. It certainly did not constitute a large part of the category of "other races": she would welcome more details of the races which did make up that category. Lastly, the representative had said that the "negro black" population could not be broken down further, since most members of the group identified themselves with Africa as a whole, rather than with any particular part of it.

8. Mr. de GOUTTES said that the Committee was pleased to see a representative of Jamaica at the meeting. It had not received any reports of large-scale racial discrimination in that country. The last report stated that Jamaica had a "dualist" legislative system, in which the Convention could not be directly invoked before the courts, but had to be incorporated into domestic legislation by means of a special law. In such a case, the adoption of measures to implement article 4 of the Convention was particularly important. He hoped to hear more on that subject when Jamaica submitted its next periodic report.

9. During the consideration of the last report, many members had deplored the absence of information about the poorest population groups in Jamaica. The Committee needed socio-economic indicators to tell it whether ethnic minority groups were disproportionately represented among the unemployed, criminals, prison inmates, alcoholics, drug addicts and prostitutes.

10. Finally, he would like to know Jamaica's position with regard to article 14 of the Convention, which allowed the Committee to receive complaints from Jamaican citizens claiming that their rights under the Convention had been violated.

11. Mr. YUTZIS said he was glad that Jamaica had sent a representative to the meeting, which showed its willingness to cooperate, but it must try to submit its periodic reports on time, as it had undertaken to do on acceding to the Convention. Regular and up-to-date reports were vital to the Committee's task of monitoring racial discrimination.

12. He had a number of questions, which he hoped would be answered either at once or in the next periodic report. He would like more details of Jamaica's measures to implement article 4 of the Convention, as well as article 5 dealing with economic and social rights. The Committee needed to know whether ethnic minority groups received equal treatment in respect of housing, employment, health care, etc. He would also welcome more information about demographic indicators and trends. The dramatic drop in the number of mixed-race people in Jamaica, indicated in the last periodic report, might be due to a number of factors; for instance, it might mean that the different racial groups had less contact with one another and were not intermarrying as often as they had in the past, resulting in fewer mixed-race children. Lastly, he would like to know what steps the Jamaican Government was taking towards withdrawing its reservations to article 4 of the Convention.

13. Mr. PIERCE (Jamaica) said that his comments were not intended to be a report on the status of the implementation of the Convention in Jamaica. He had merely wanted to explain that Jamaica had chosen not to submit its outstanding periodic reports because it had not yet been able to adopt the legislation required to implement article 4. Perhaps that decision had been wrong.

14. In reply to Ms. Sadiq Ali's questions, he said that it would be very difficult to break down the negro/black population of Jamaica into further subgroups. Jamaica had never had a "native" population supplemented by the later arrival of "settlers" and the black pride movement of the 1960s had stressed Jamaican links with Africa as a whole, rather than with specific parts of it. There were no Amerindians left in Jamaica; they had all died out during the seventeenth century. Some people might claim to be of Amerindian origin, but a distinct racial group no longer existed.

15. Mr. de Gouttes had asked about the dramatic drop in the number of people identifying themselves as being of mixed race. That could be explained by the fact that, before Jamaica had gained independence in 1962, people had often been proud of any European ancestors they had and had thus been more inclined to describe themselves as being of mixed race. After independence, it had become more important to them to be Jamaicans.

16. He assured the Committee that all the questions outstanding from the previous report would be answered in full.

17. Mr. WOLFRUM asked for more information about a special means of individual recourse which he had heard about, called something like a "petition at a constitutional level". It was a procedure by which individuals could complain to a special court if they considered that their rights had been infringed.

18. Mr. BANTON said that, in the 1960s in Jamaica, banks and other employers had preferred light-skinned employees for jobs involving contact with the public, thus discriminating against people with darker skins. Was that still the case? The Committee would be glad to hear not only the Government's views on the matter, but also, if possible, some indication of the views of the people concerned. Did dark-skinned people - or light-skinned people, for that matter - feel at a disadvantage when applying for certain jobs?

19. Mr. PIERCE (Jamaica) said that it was certainly possible for an individual to bring a case before the Constitutional Court in certain circumstances. Jamaica would give full details in the next periodic report. In reply to Mr. Banton's question, he said that, in the past, light-skinned people had, indeed, been preferred for certain jobs, but that was no longer the case; people of all colours were now treated on an equal basis.

20. The CHAIRMAN said that the Committee had thus concluded the first part of its consideration of the status of the implementation of the Convention in Jamaica. Ms. Sadiq Ali would prepare concluding observations and submit them to the Committee for consideration.

21. Mr. Pierce (Jamaica) withdrew.

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SEVENTH SESSION (agenda item 2) (continued)*

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (GENERAL ASSEMBLY RESOLUTION 47/79);

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION 47/111)

Report of the Working Group on Prevention and Emergency Situations (concluded)*

Prevention of racial discrimination, including early warning and urgent procedures: working paper submitted by Mr. Régis de Gouttes (CERD/C/1993/Misc.1/Rev.1 and 2)

22. Mr. de GOUTTES, introducing the revised version of his working paper on "Prevention of racial discrimination, including early warning and urgent procedures" (CERD/C/1993/Misc.1/Rev.1), said that, generally speaking, the

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* Resumed from the 975th meeting.

paper represented a consensus on the part of the members of the Working Group on Prevention. Accordingly, there should be no need to reopen the discussion on it, with the exception of two proposals made under the heading "Urgent procedures" in paragraph 10, on which there had been some differences of view. The first proposal, in paragraph 10 (i), was that the Committee might designate a special rapporteur to initiate an urgent procedure and the second, in paragraph 10 (j), was that the Committee might approach the Secretary-General and recommend that the matter be brought to the attention of the Security Council.

23. The Chairman might wish to put those two proposals to the vote, so that the paper as a whole could then be adopted by consensus.

24. Mr. DIACONU said that, in paragraph 9 (a), the words "and there is the risk of further human rights violations" should be amended to read: "and there is a risk of further racial discrimination".

25. In his view, the proposal in paragraph 10 (i) made no sense, since it prejudged any decision the Committee might take with regard to the procedure proposed in paragraph 10 (h). In any event, the procedure of designating a special rapporteur for such a purpose was not used in any other human rights treaty body.

26. The proposal in paragraph 10 (j) that the Committee should recommend to the Secretary-General that the matter be brought to the attention of the Security Council went far beyond the Committee's terms of reference and took it into difficult and dangerous territory. It should be left to the Secretary-General to decide what action to take on the basis of information received. All other human rights bodies operated on that basis and even the Commission on Human Rights had never ventured to ask the Secretary-General to bring a particular case before the Security Council.

27. Mr. YUTZIS proposed that the last sentence of paragraph 11 should be amended to read: "In particular, such seminars could focus on, first, the relationship between violence and racism; secondly, the involvement of youth in contemporary forms of racism; thirdly, measures to eliminate racist propaganda; and, fourthly, refugee flows arising from ethnic conflicts and political change."

28. Mr. SONG Shuhua said that, while he was in broad agreement with the proposal made in paragraph 10 (i), he could not accept that made in paragraph 10 (j), since the procedure in question would go beyond the Committee's mandate.

29. Mr. GARVALOV thanked Mr. de Gouttes and the Working Group for the excellent working paper, which, if adopted, would enhance the Committee's effectiveness.

30. He suggested that the heading "Urgent procedures" before paragraph 10 (h) should be amended to read "Urgent action procedures", since it was the action, rather than the procedures, which was important.

31. Mr. FERRERO COSTA said the paper already reflected the maximum degree of consensus achievable and in fact the heading "Urgent procedures" had itself been adopted by consensus. He urged members not to reopen the discussion on points which did not relate to matters of substance. A vote should be taken immediately on the two specific points in paragraph 10 (i) and (j) on which agreement had not been reached.

32. He suggested that the amendment proposed by Mr. Yutzis, which was essentially a matter of drafting, could be accepted. On the more substantive points, it had been objected that no other committees had procedures of the kind proposed: he himself did not see that as sufficient reason for the Committee not to adopt them.

33. Mr. de GOUTTES said he agreed that the best course would be for the Committee to accept the compromise text that had been prepared by the Working Group. He would ask Mr. Garvalov not to insist on his proposed amendment. He could accept the less substantive amendment proposed by Mr. Yutzis.

34. Mr. WOLFRUM said he regarded it as a serious flaw in the working paper that the words "Urgent action procedures" had been rejected. He would have liked the list of criteria in paragraph 9 (b) to include "the concentration of refugees in a given country", since that factor could also lead to tensions, but he would not press the point. As to the suggestion by Mr. Yutzis, he would have preferred "refugee flows arising from ethnic conflicts and political change" to come last in the list, but again would not press his objection.

35. He could endorse the working paper as a whole, although it was not entirely as he would have liked on all points.

36. Ms. SADIQ ALI said she could support the proposal in paragraph 10 (i), but had reservations about the proposal in paragraph 10 (j), which might be going beyond the Committee's mandate.

37. Mr. GARVALOV said that, although he preferred the words "urgent action procedures", he had not intended to propose them formally and would not press the point.

38. Mr. RECHETOV said that, in many United Nations bodies, decisions were recorded as having been taken "without a vote" rather than "by consensus". Indeed, the Committee itself had resorted to a vote only on rare occasions. Since a number of members had indicated that, although they had certain objections to the text, they could accept the majority view, he would appeal to the Committee to consider adopting the working paper without a vote.

39. Mr. de GOUTTES said he agreed that it would be better to avoid a vote if possible. Since the proposal in the last two lines of paragraph 10 (j) seemed to be causing the most difficulty, he suggested that it might be amended by the addition of the words "... along the lines of those contained in the report of the United Nations Secretary-General to the forty-sixth and forty-seventh sessions of the General Assembly on the work of the Organization".

40. Mr. DIACONU said that, even with that addition, the Secretary-General would be embarrassed to receive such a recommendation. To his knowledge, none of the human rights treaty bodies had ever told the Secretary-General what to do with the information he received. Such a procedure would go far beyond any of those envisaged in the United Nations Charter.

41. There might be a chance of reaching a consensus if the words "a special rapporteur" in paragraph 10 (i) were replaced by the words "a working group" and if the proposal in the last two lines of paragraph 10 (j) was deleted.

42. Mr. FERRERO COSTA said he could not accept that suggestion. He would prefer that the Committee should vote immediately on the two points under discussion.

43. Mr. SONG Shuhua said he supported Mr. Diaconu's suggestion that the proposal in the last two lines of paragraph 10 (j) should be deleted.

44. Mr. WOLFRUM said that, if the changes suggested by Mr. Diaconu were incorporated into the paper, he would vote against it. The objections to the reference in paragraph 10 (j) to the special rapporteur established under Commission on Human Rights resolution 1993/20 and to the last reference, which was basically the same as Article 99 of the United Nations Charter, were incomprehensible. The right of the Secretary-General to bring matters to the attention of the Security Council was well established, as was the right of the Committee to bring matters to the attention of the Secretary-General.

45. Mr. SHAHI said that a special rapporteur could monitor critical situations only with the assistance of a working group and he wondered how a working group would operate when the Committee was not in session. He had no objection to the addition of the words suggested by Mr. de Gouttes in paragraph 10 (j).

46. The CHAIRMAN invited the Committee to vote on paragraphs 10 (i) and (j), and then on the working paper as a whole.

47. *A vote was taken by roll-call on paragraph 10 (i).*

In favour:	Mr. Banton, Mr. Ferrero Costa, Mr. Garvalov, Mr. de Gouttes, Mr. Rechetov, Ms. Sadiq Ali, Mr. Shahi, Mr. Valencia Rodríguez, Mr. Wolfrum and Mr. Yutzis.
Against:	Mr. Diaconu.
Abstaining:	Mr. Song Shuhua.

48. *Paragraph 10 (i) was adopted by 10 votes to 1, with 1 abstention.*

49. A vote was taken by roll-call on paragraph 10 (j).

In favour: Mr. Banton, Mr. Ferrero Costa, Mr. Garvalov, Mr. de Gouttes, Mr. Rechetov, Ms. Sadiq Ali, Mr. Shahi, Mr. Valencia Rodríguez, Mr. Wolfrum and Mr. Yutzis.

Against: Mr. Diaconu, Mr. Song Shuhua.

50. Paragraph 10 (j) was adopted by 10 votes to 2.

51. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee adopted the working paper (CERD/C/1993/Misc.1/Rev.2) as a whole, as amended, by consensus.

52. It was so decided.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)

Draft general recommendation on the establishment of national human rights commissions

53. Ms. SADIQ ALI said that the draft recommendation on the establishment of national human rights commissions had been amended to read:

"The Committee on the Elimination of Racial Discrimination,

"Considering the practice of States parties concerning the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination,

"Convinced of the necessity to further encourage the establishment of national institutions to facilitate the implementation of the Convention,

"Taking into account that article 14, paragraph 2, of the Convention addresses the establishment of human rights commissions in the case that States parties have made a declaration in accordance with article 14, paragraph 1, of the Convention and wish to use the commission as a clearing body,

"Further taking into account that article 6 of the Convention obliges States parties to '... assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination ...', "_Emphasizing_ the need to further strengthen the implementation of the Convention,

"1. _Recommends_ that States parties establish national human rights commissions to serve all or some of the following purposes:

"(a) To protect against discrimination and to protect civil and other human rights;

"(b) To systematically review Government policy toward human rights and suggest improvements;

"(c) To monitor State legislative compliance with existing human rights law;

"(d) To educate the public about human rights issues with a view to promoting greater understanding; and

"(e) To assist the Government in the drafting of reports to the United Nations human rights bodies.

"2. _Further recommends_ that, where such commissions have been established, the State party should consider inviting them to join in Government delegations in order to intensify the dialogue between the Committee and the State party concerned."

54. _Mr. WOLFRUM_ said that the draft recommendation appeared to have left out a number of important aspects covered by a workshop which had been held in Paris in October 1991 and whose report was document E/CN.4/1992/43. It might be useful if some members of the Committee were to go through that report and redraft the recommendation accordingly.

55. It was not entirely clear what function the national commissions were intended to serve. They might be useful as monitoring bodies, but the work of disseminating information on human rights should be left to non-governmental organizations. If they were intended to receive individual complaints, he could not support the draft recommendation in its present form, since many countries had a very sophisticated legal system which protected the rights of individuals, including those provided for in the Convention on the Elimination of All Forms of Racial Discrimination and other human rights instruments, and whose work would largely be duplicated by a national commission.

56. _Mr. de GOUTTES_ said the deletion of explicit references to an individual complaints system in paragraph 1 had met his main concern.

57. He proposed, however, that the words "addresses the establishment of human rights commissions" in the third preambular paragraph should be replaced by the words "refers to the possibility of establishing human rights commissions" and that the fourth preambular paragraph should be deleted in its entirety, since, in many countries, the ordinary courts dealt with complaints.

58. In paragraph 1 (b), the words "policy towards human rights" should be replaced by the words "policy against racial discrimination". In paragraph 1 (c), the words "human rights law" should be replaced by the words "legislation against racial discrimination". In paragraph 1 (d), the words "human rights issues" should be replaced by the words "racial discrimination". He also proposed that paragraph 2 should read: "Further recommends that the representatives of such commissions should be associated with the preparation of reports or included in Government delegations ...".

59. Mr. DIACONU said that the draft recommendation did not request States parties to establish the type of commissions which were referred to in article 14 and which had a clearly defined role in States parties that had made a declaration under article 14 (1). Rather, it called for the establishment of the kind of body which the General Assembly had been suggesting for many years. Some States already had a commission which had been set up for propaganda purposes, while others had institutions or foundations to deal with human rights issues. The role referred to in the draft recommendation was far broader and, for that reason, might be too ambitious. Generally speaking, however, if the draft recommendation was considered useful, it might be improved by minor drafting amendments.

60. Mr. SONG Shuhua said that his first concern was that the Committee should make proposals relating only to the elimination of racial discrimination: the draft recommendation as it stood aimed at the establishment of national human rights commissions and went far beyond the Committee's mandate. The Committee should also not concern itself with the issues dealt with by other treaty bodies. In addition, many countries already had a well established institutional framework and no need for another human rights body.

61. Mr. BANTON said that the draft recommendation had originally been considered by the Committee in 1992; a working group had then been set up to prepare a revised version of the text. At the time, he had pointed out that, before adopting a recommendation on national human rights commissions, the Committee would need more complete information on what was being undertaken in that connection in a variety of countries. As it stood, the general draft recommendation was in need of revision. It should be made universal in scope, taking into consideration the situation in both small and large countries. It must also give due consideration to other United Nations initiatives in that field. In view of the foregoing, it might be better to assign the task of revision to a working group.

62. Mr. SHAHI said that Pakistan was itself in the process of setting up a national human rights commission. A number of steps were involved. The first related to the scope of the commission. Pakistan's would be dealing with the entire range of human rights, rather than limiting itself to racial discrimination. Next, the degree of independence of the commission had to be determined. Lastly, the Government had to ensure that the commission did not impinge on individuals' right of recourse to the courts, thus competing with the judicial system for the hearing of complaints. Several countries had

established the office of ombudsman, an authority with limited or specific powers. If the role of such offices was expanded to include the consideration of all human rights issues, they too might potentially interfere with the right of individuals to bring their complaints before the courts.

63. He believed that Ms. Sadiq Ali had studied the report of the International Workshop on National Institutions for the Promotion and Protection of Human Rights (E/CN.4/1992/43), held in Paris from 7 to 9 October 1991 and had incorporated the relevant material into the draft recommendation on human rights commissions. In that connection, the Workshop had formulated a set of guidelines on the structure and role of national institutions, which had been endorsed by the Commission on Human Rights at its forty-eighth session.

64. Before the Committee could give further consideration to the draft recommendation, a working group was needed to assess the need for human rights commissions in various countries.

65. Ms. SADIQ ALI said that she had taken note of the comments made by the members of the Committee. She recalled that the original working group had never met. The Committee should set up a new working group to prepare a revised draft recommendation for consideration at its next session.

66. Mr. RECHETOV said that the Committee might wish to set a deadline for the submission of revised draft recommendations; any documents submitted after the deadline would not be considered at the current session. Those recommendations chosen for consideration should be ordered in terms of priority.

67. Mr. SHAHI requested that the consideration of the draft recommendation should be suspended for two days.

68. The CHAIRMAN said that the consideration of the draft recommendation would be postponed; consultations would be held with a view to preparing a revised text.

Draft general recommendation on training of law enforcement officials in the protection of human rights (concluded)*

69. The CHAIRMAN drew the Committee's attention to the draft general recommendation on training of law enforcement officials in the protection of human rights, as revised by Ms. Sadiq Ali.

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* Resumed from the 969th meeting.

70. Ms. SADIQ ALI said that the text, which had been redrafted in the narrative style, read:

> "1. According to ICERD article 2, paragraph 1 (a), States parties have undertaken that all public authorities and public institutions, national and local, will not engage in any practice of racial discrimination. Further, that States parties have undertaken to guarantee the rights listed in ICERD article 5 to everyone without distinction as to race, colour, or national or ethnic origin.
>
> "2. The fulfilment of these obligations very much depends upon national law enforcement officials who exercise police powers, especially the powers of detention or arrest, and upon whether they are properly informed about the obligations their States has entered into under the Convention. Law enforcement officials should receive an intensive training to ensure that in performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin.
>
> "3. In implementation of ICERD article 7, the Committee calls upon State parties to review and improve the training of law enforcement officials so that the standards of the Convention as well as the Code of Conduct of law enforcement officials (1979) are fully implemented. They should also include respective information thereupon in their periodic reports."

71. Mr. DIACONU said that he endorsed the draft general recommendation.

72. Mr. WOLFRUM said that he also supported the draft recommendation, which was a great improvement over the previous version.

73. Mr. de GOUTTES said that he had a reservation about the words "powers of detention or arrest" in the first sentence of paragraph 2. Stating that law enforcement officials exercised powers of detention might imply recognition of such powers by the Committee. The power of detention was vested not in law enforcement officials, but in the courts. He would therefore prefer to have the words "powers of detention or arrest" replaced by the words "power of arrest", since law enforcement officials were entitled to make arrests, on instructions from the court.

74. Mr. FERRERO COSTA said that he endorsed the draft recommendation, with the amendments proposed by Mr. Diaconu and Mr. de Gouttes. The latter's amendment would not in any way affect the scope of the recommendation.

75. In paragraph 3, the title of the Code of Conduct for Law Enforcement Officials should be given in full. The last sentence of that paragraph, which called on States parties to include information on the training of law enforcement officials in their periodic reports, was worthy of being highlighted in a separate paragraph.

76. Mr. RECHETOV said he hoped that members would not focus on minor points that were specific to their own legal systems. In that connection, he found it difficult to believe that there were no legal provisions in France or Latin America granting powers of detention to law enforcement officials. In his country, such officials did have such powers in certain specific circumstances.

77. Mr. WOLFRUM said that nearly all legal systems, including that of France, allowed law enforcement officials to detain individuals for a period of 48 hours. The power of detention was expressly mentioned in the Code of Conduct for Law Enforcement Officials. In fact, the wording in question in the draft general recommendation was based on article 1 (a) of the Code. If the Committee deleted the reference to the power of detention, the text might be interpreted as implying that law enforcement officials were free to engage in practices of racial discrimination against individuals under detention, although not with respect to those under arrest. He would thus like the original reference in paragraph 2 to the "powers of detention or arrest" to be retained.

78. Mr. de GOUTTES said that he could agree that the text should refer to the powers of both detention and arrest. In the French version, however, the word "*détention*" in paragraph 2 should be replaced by the word "*rétention*", which included "*garde à vue*" and was thus a more accurate reflection of the French legal system.

79. Mr. FERRERO COSTA said that he could agree that the words "detention or arrest" should be retained. However, the word "powers" might be replaced by a more general term.

80. Mr. SONG Shuhua said that he endorsed the draft general recommendation. It was clear that law enforcement officials should be familiar with laws before enforcing them.

81. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee adopted the draft general recommendation, as amended.

82. *It was so decided*.

The meeting rose at 6 p.m.

CERD/C/SR.980
27 July 1993

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 980th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 17 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Fourth periodic report of Chad (CERD/C/114/Add.2, CERD/C/SR.838)

1. The CHAIRMAN reminded the Committee that it had not received any more recent written report in respect of Chad than the fourth periodic report (CERD/C/114/Add.2), which had been submitted on 4 November 1986 and considered at the 838th meeting, in 1989. The consideration of that report had been summarized in summary record CERD/C/SR.838. However, a delegation from Chad had come to the meeting to describe the situation in that country in respect of human rights in general and the elimination of racial discrimination in particular. The high-level delegation was composed of Mr. Nadjidoumdé, the Minister of Humanitarian Affairs and Mr. N'Garoudal, Principal Private Secretary in the Ministry of Humanitarian Affairs.

2. At the invitation of the Chairman, Mr. Nadjidoumdé and Mr. N'Garoudal (Chad) took places at the Committee table.

3. Mr. NADJIDOUMDE (Chad) said that in order to analyse the situation relating to human rights, and more particularly, to the elimination of racial discrimination in Chad, he would distinguish two main periods extending from June 1982 to November 1980 and from 1 December 1990 to March 1993, which corresponded to two successive political regimes.

4. His country covered an area of 1,284,000 km^2 and was subdivided into 14 prefectures. Two thirds of the territory was located in the Sahelo-Saharan zone and was populated by Muslim tribes. The remaining third was the densely populated southern zone, inhabited mainly by Christians and Animists who accounted for 70 per cent of the population, estimated at 6 million persons. The next census of the Chadian population was scheduled for 1 April 1993. Chad, a cosmopolitan and secular country, had 110 tribes and dialects; despite that diversity the population of Chad had lived together peacefully from time immemorial.

5. However, during the eight years of Hissein Habré's dictatorship, from 1982 to 1990, the Goranes, members of the deposed President's tribe, had engaged in all kinds of discriminatory practices throughout the national territory. Conflicts had then arisen between the north and the south, between Christians and Muslims and, at the linguistic level, between Arabic and French.

6. By Decree No. 14/P-CE/CJ/90 of 29 December 1990, the Government of Chad had set up a Commission of Inquiry into the crimes and misappropriations of the former President and his accomplices. The mandate of the Commission was, inter alia: to investigate illegal confinements, arrests, murders, disappearances, torture and other ill-treatment and all human rights

physical and mental state following their detention; to hear eligible persons and to invite them to provide written proof; and to hear anyone whose testimony might reveal the truth.

7. As far as crime was concerned, the final toll of the eight years of the Habré regime was a terrifying one: there were over 40,000 victims, over 80,000 orphans, over 30,000 widows and over 200,000 people who found themselves without moral or material support as a result of that repression. In addition, there was the personal property and real-estate looted and confiscated from peaceful citizens, estimated at CFA francs 1 billion each year.

8. The Commission of Inquiry had recommended the introduction of the genuine democracy and an independent and sovereign system of justice. To achieve that end, it had urged the current Government to speed up the democratic process. It had also recommended that a national human rights commission should be set up with the task of investigating violations, guaranteeing the protection and promotion of human rights at the national level and instituting criminal indemnification proceedings in cases concerning human rights violations. It has also made the following recommendations: the unlawful occupation of houses and the looting of property should be brought to an end; a commission responsible for returning confiscated personal property and real estate to their rightful owners should be set up; personal property and real estate belonging to the former agents of the Directorate of Documentation and Security (DDS) involved in crime and looting should be subject to provisional attachment; legal proceedings should be instituted against persons guilty of crimes against humanity; a monument should be built in memory of the victims of the repression and the second Sunday in the month of December proclaimed as a day of prayer and meditation; the former DDS headquarters and the underground prison should be transformed into a museum; the powers and the structure of the new special service called the General Directorate of the Information Research and Coordination Centre (DGCRCR) should be reviewed; all former DDS agents rehabilitated and recruited into the DGCRCR should be removed from their functions; the current legislative provisions of the Penal Code and Code of Penal Procedure relating to infringements of the internal and external security of the State should be enforced; the detention centres under the control of the DGCRCR and the Directorate of General Information should be closed down and only those envisaged by the Code of Penal Procedure retained; and the teaching of human rights in secondary schools, universities, police and gendarmerie colleges as the well as the army should be encouraged. Finally, the Commission of Inquiry recommended that the Head of State should take the requisite measures to deal severely with persons guilty of human rights violations.

9. The Commission of Inquiry had recommended that: the investigations into the financial operations of former President Habré, who had plundered the Treasury, should continue in order to repatriate the stolen money; legal proceedings should be instituted against those who had stolen from the coffers of the State in N'Djamena and in the provinces, during the events of 1 December 1990; requisite measures should be taken to bring the embezzlement

of funds from the Treasury, parapublic societies and private companies to an end. The Government had set up a special criminal court which would sit in the near future to implement the conclusions and recommendations of the Commission of Inquiry.

10. Following the political and military changes that had occurred since 1 December 1990, the Government was striving to bring about, at a gradual pace, drastic structural and operational changes in order to secure the promotion and respect of human rights, which had previously been flouted in a country ravaged by 30 years of war and dictatorship. It reaffirmed the commitment of the Chadian people to the principles of the 1789 Declaration of the Rights of Man and of the Citizen, the 1948 Universal Declaration of Human Rights and the 1981 African Charter of Human and Peoples' Rights. It also gave special attention to the right to development and, in general, to economic, social and cultural rights which were indissociable from civil and political rights.

11. In that new context of democratization, the Government of Chad had set up certain bodies vital for the establishment of a State subject to the rule of law. First of all, there was his own Ministry, the Ministry of Humanitarian Affairs. Its task was to create conditions conducive to the exercise of democratic freedoms and to mobilize national and international solidarity on behalf of populations exposed to natural disasters and civil unrest. It also had the task of promoting and coordinating humanitarian activities, making the public aware of its rights and duties, safeguarding individual and collective rights and ensuring that victims of abuses obtained redress. Its activities were set against the current background of proliferating political groupings. Some 33 political parties had been legalized in the country from 1991 to 1993, as well as 60 different humanitarian associations and organizations.

12. The Ministry of Humanitarian Affairs was assisted by an advisory body, the National Human Rights Commission, which investigated and issued opinions for the information of the Government on all questions related to violations of human rights and fundamental freedoms. The following cases were referred as a matter of course to the Commission: the existence of a political police force, the use of torture and inhuman and degrading treatment, abductions, disappearances, arbitrary detention and incarceration of detainees in secret locations. It published an annual report on its activities. It participated in human rights education and training activities. Leading figures from various departments, civil society and religious life sat on the Commission. It could set up working groups on specific issues, and it had free access to all governmental and non-governmental agencies for the purpose of obtaining information. The Chairman of the Commission could request the various ministries to prepare reports on matters coming within their sphere of competence.

13. The Government had also enacted a series of administrative, legal and institutional measures, including Decree No. 001/PR/91 of 1 March 1991 promulgating the National Charter of the Republic, adopted by the National Salvation Council on 28 February 1991. The Charter guaranteed fundamental

freedoms and rights, including the freedom of opinion and of association, the freedom of the press, the free movement of persons and property, the right to own property and the individual and collective freedoms in a pluralist democracy.

14. The Government had also adopted Order No. 001/PR/91 establishing a military court competent to deal with the following offences: murder, kidnapping or abduction, rape followed by death, rape leading to disability, armed robbery or robbery in conjunction with murder, conspiracy, assault and battery causing death unintentionally, unlawful wearing of military uniform, unlawful possession of arms and ammunition, and harbouring perpetrators of the above-mentioned offences. Military personnel or paramilitary agents guilty of or accomplices of those offences, as well as civilian accomplices or receivers, could be brought before the military court. The establishment of that court of special jurisdiction was in response to the public's wish to deter wrongdoers who used military weapons to commit serious offences.

15. An ad hoc criminal court had also been established to deal with cases of assassination, murder, rape, interference with judicial functions, the unauthorized assumption of titles or functions, arbitrary detention and prosecution, unlawful arrest, illegal confinement of individuals, illegal entry, drug traffic, robbery, fraud, damage to property, corruption, extortion and corrupt practice during the period from 7 June 1982 to 1 December 1990, committed by former President of the Republic, Hissein Habré, and his accomplices, DDS agents or the members of any public force acting independently of their superiors, the political authorities, etc.

16. The Government had also taken the necessary steps to ratify the International Covenant on Civil and Political Rights and its two Optional Protocols, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture.

17. Unfortunately, 10 months after 1 December 1990, the date of the advent of peace and democracy, the country had once again been subjected to a number of deplorable incidents caused by rebel groups which harassed the forces of law and order in several locations. Following the discovery of a conspiracy against the security of the State, a number of persons had been arrested, but in a spirit of goodwill, they had subsequently been released and rehabilitated into society. That had given rise to a communication by the Prime Minister on 24 January 1992. However, at the end of December 1991, armed groups calling themselves the Democratic Movement of Chad (MDD), close to former President Habré, had attacked government positions in the Lac region; there had been many casualties on both sides. Those acts had been condemned by Ministries of Foreign Affairs (including France and the United States), humanitarian, trade union and political organizations, and all levels of society. Since then, the Government had been making tremendous efforts to bring peace to the Lac region. The MDD close to former President Habré rejected any dialogue, but the contacts with the MDD of Mr. Moussa Medella had led to a peace agreement and reconciliation. Unfortunately, the agreement had

been called into question by the same MDD, which had resumed hostilities. However, the Government had spent over CFA francs 600 million to restore peace to the region and nearly all the members of the MDD who had been arrested had been released following an amnesty in 1992.

18. On 21 February 1992, members of the military had tried to seize power, and then had gone underground in the south of the country. They had formed a movement called the Committee of National Awakening for Peace and Democracy (CSNPD). Despite ambushes and attacks against the army, the Government had tirelessly continued negotiations which had concluded with a peace agreement on 22 June 1992. However, the CSNPD had subsequently violated the agreement on two occasions by engaging in hostilities. More than CFA francs 200 million had been spent in a bid to restore peace to the eastern Logone region, but the CSNPD had preferred to stay underground.

19. He regretted that some humanitarian organizations and some newspapers had distorted the events he had just described. He assured the Committee that there were no longer any political prisoners in Chad and that no journalist was being held in detention. Only ordinary law prisoners were incarcerated. No state of emergency had been decreed in Chad since 1 December 1992. Instances of human rights violations were due to the insecurity that prevailed in the country after 30 years of civil war; that insecurity explained why there were many weapons in the possession of armed gangs and civilians. The present Government had made unprecedented efforts over the last two years to bring that state of affairs to an end by addressing the sensitive tasks of reorganizing the army, disarming civilians and achieving reconciliation with the armed opposition movements.

20. The statement he had just made was of a general nature, and he was perfectly willing to answer more specific questions which members of the Committee might raise. He assured the Committee once again that although Chad had been absent from its discussions since 1984, it would henceforth be present at all times.

21. Mr. de GOUTTES, speaking as rapporteur for Chad, welcomed the presence of the Minister of Humanitarian Affairs of Chad, who had come to give the point of view of his Government at a time when the Committee had been preparing to consider the situation in his country solely on the basis of outdated reports. Mr. Nadjidoumde's presence reflected the determination of the Government of Chad to resume the dialogue with the Committee, despite the country's current difficulties.

22. The statement just made by the representative of Chad had furnished the Committee with very useful general information on the demographic composition of that country. It had indicated that the next census would be taken on 1 April 1993; the Committee must hope, therefore, that data based on that census would appear in its next periodic report. Mr. Nadjidoumde had also provided useful information on general political developments in Chad during the eight years of Hissein Habré's presidency (1982-1990) as well as explanations about the serious events that had occurred in October 1991, December 1991 and December 1992.

23. He also considered of interest the information on the measures taken since 1 December 1990 to shed light on the human rights violations committed between 1982 and 1990, and in particular on the discriminatory acts carried out by members of the former President's tribe, the Goranes, against other ethnic groups. He had noted the establishment of a Commission of Inquiry into crime and misappropriation of funds, the adoption of the National Charter on 28 February 1991, the establishment of a Ministry of Humanitarian Affairs, the setting up of a National Human Rights Commission, the legalization of the 33 political parties and 60 humanitarian associations or organizations and finally the commitment to ratify important international human rights instruments.

24. He noted, however, that despite the intrinsic interest of the communication by the Chadian delegation, it did not deal specifically with problems of racial discrimination and could not take the place of a periodic report. The Committee might therefore consider the communication as a preamble to the future report which the Republic of Chad would be required to submit to it as soon as possible. The report should be drafted in conformity with the general guidelines concerning the form and content of reports and should therefore consist of a general part, describing the social, political, economic and institutional context in which the Convention was implemented, and an analytical part, addressing the actual implementation of each article of the Convention.

25. The general section should contain information on the evolution of the domestic situation of the country in the demographic, political and economic fields.

26. At the demographic level, the Committee would like to be informed of the results of the census which would take place on 1 April 1993, including the distribution of the population by ethnic group. It would also like to be informed of the demographic growth rate, the unemployment rate and the literacy rate.

27. At the political level, it would be helpful to indicate the progress made by the National Conference inaugurated in N'Djamena on 15 January 1993 and which should make it possible to draft a new constitution and to set an electoral timetable, thereby showing the Government's determination to move forward on the road towards a more democratic system, a road which it had already taken by authorizing parties in 1992. The Government should also take stock of the international instruments that had been ratified.

28. In the economic context, the Committee would also like to know what was the impact on the most disadvantaged social categories of the country's deteriorating economic and financial situation, due mainly to a decline in revenue caused, inter alia, by large-scale fraud and by very heavy public spending mainly on the military.

29. In the part of the report devoted to the actual implementation of the various articles of the Convention, the Chadian Government should analyse in depth the legislation which, in conformity with article 4 of the Convention, made racist acts an offence. When it considered the fourth periodic report, the Committee had deplored the dearth of information in that regard.

30. In accordance with article 6 of the Convention, the report should also contain information on the effective remedies through tribunals available to victims of discrimination, as well as data on complaints filed, proceedings instituted and sentences handed down.

31. The Committee would also like to know what measures had been taken, in compliance with article 7 of the Convention, to help the various ethnic communities in the cultural, educational and social fields.

32. According to the information that was available, it would seem that in Chad power had first been exercised by the south during the Presidency of Mr. Tombalbaye from 1962 to 1975, and then by the ethnic groups of the north during the Presidency of Mr. Hissein Habré, and finally by the tribes from the east of the country with the assumption of power of President Deby.

33. According to Amnesty International, the Hadjeraï ethnic group, suspected of being unfavourable to the Government, had been the target of serious repression and members of that group were reported to have been extrajudicially executed by military personnel. In October 1991, violent clashes had occurred between the Hadjeraï and members of other ethnic groups, and many Hadjeraï had been arrested and charged with plotting to overthrow President Deby. In November 1991, the Government had set up a commission to investigate human rights violations committed in the wake of what was presumed to be an attempted coup d'état. The Commission would like to be informed about the work of the Commission and to have information on the above-mentioned events.

34. In conclusion, he thanked the Chadian Government for sending the Minister of Humanitarian Affairs to make his comments to the Committee and invited it to submit in writing at an early date its new periodic report in the prescribed form. He also reminded it that States that so wished might request the Centre for Human Rights advisory services and the Committee for assistance in drafting their periodic report.

35. Mr. WOLFRUM associated himself fully with the views expressed by Mr. de Gouttes and congratulated the Chadian Government on resuming its dialogue with the Committee. He expressed the hope that Chad would soon submit a written report which would enable that dialogue to be extended.

36. Mr. YUTZIS welcomed the presence of the Chadian delegation, which reflected the will of the Chadian Government to engage in a dialogue.

37. He would like to have information on the situation of the very many ethnic groups in Chad, particularly from the viewpoint of article 5 of the Convention. Finally, he would like to know whether the National Human Rights Commission set up by the new Government included representatives of the most vulnerable groups among its members.

38. Mr. DIACONU welcomed the presence of the Chadian delegation, which attested to the will of the Chadian Government to revive the dialogue with the Committee. He was gratified that, despite the economic difficulties being experienced by the country, the Government was determined to develop legislative and institutional structures appropriate for a State subject to the rule of law so as to preclude the return of a dictatorship.

39. In conclusion, he would like the Chadian Government to submit its next report to the Committee's August session; the report should contain ample information on the way in which the Convention was implemented.

40. Mr. NADJIDOUMDE (Chad) said that he had made a careful note of the comments by the members of the Committee and that detailed answers would be given in the forthcoming report by the Chadian Government; the report would be submitted next August and drafted in conformity with the guidelines on the form and content of reports and with the wishes expressed by Mr. de Gouttes. His Government would not hesitate to apply for the assistance of the advisory services of the Centre for Human Rights.

41. Racial discrimination did not form part of the traditions of Chad, which had 110 tribes and 14 regions. It was true, however, that acts of racial discrimination had been committed during the regime of Hissein Habré, who had considered his tribe to be superior to the others. For instance, in order to have an important post, one had to belong to the President's tribe. Moreover, in order to rule more effectively, Hissein Habré had tried to divide north and south, Christian and Muslim, French speaker and Arabic speaker.

42. All those practices had come to an end with the departure of Hissein Habré. Today Chad had 33 political parties. For a party to be recognized, it had to have representatives in at least 10 of the 14 regions of the country. The purpose of that measure was to prevent tribalism and regionalism.

43. The dispute between the Peul nomadic cattle breeders and the sedentary farmers was on the way to being resolved. The farmers were being compensated for the damage caused to their crops by the nomads' herds, which had not been the case under Hissein Habré. Seasonal transhumance corridors would be opened up in order to limit that damage.

44. In Chad, no law authorized discriminatory practices, there was no sexual discrimination, and foreigners were on an equal footing with nationals in the eyes of the law. In conclusion, he thanked the members of the Committee for their attention and assured them that other issues would be answered in detail in the next report of Chad.

45. Mr. YUTZIS said that the Chadian authorities should create a multi-ethnic State and should define certain priorities aimed at securing respect for minorities. The task was not an easy one in view of the country's current economic difficulties.

46. Having studied many reports, members of the Committee were aware that in any country where several ethnic groups lived together, there was a risk that one of them might try to monopolize power and engage in discrimination against the other ethnic groups. That was the reason why the Convention not only prohibited any law that would legitimize such discrimination but also made it an obligation for States to promulgate laws forbidding such a practice. The Chadian authorities should therefore, to the extent possible, discharge the obligations set out in article 4 of the Convention.

47. Mr. de GOUTTES agreed with Mr. Diaconu that it was important that Chad should consolidate the rule of law so as to prevent a dictatorial regime from returning to power.

48. Mr. NADJIDOUMDE (Chad) said, in answer to the question by Mr. de Gouttes, that all those persons, mainly Hadjeraï, who had been arrested following the clashes in October 1991 had been released and reinstated in their posts within the State machinery. For instance, the former Minister of the Interior, Mr. Maldom Bada Abbas, who had been among the persons arrested, was currently the President of the National Assembly. A Hadjeraï problem therefore no longer existed in Chad.

49. The CHAIRMAN thanked the Chadian delegation for coming to engage in a dialogue with the members of the Committee.

50. Mr. Nadjidoumde and Mr. N'Garoudal (Chad) withdrew.

51. The CHAIRMAN invited Mr. de Gouttes to inform the Committee of his final conclusions as to the situation in Chad.

52. Mr. de GOUTTES said that despite the importance of the oral statement by the representative of Chad, it could not be equated with a report. He was therefore unable to submit final conclusions. He proposed that he should make some comments to the Committee later on the statement by Chad and that those comments should be regarded as provisional conclusions. That was the procedure that had been followed, at the Committee's forty-first session, in the case of Viet Nam which had not submitted a report but had sent a representative.

53. The CHAIRMAN accepted the proposal: in the absence of a written report submitted by a State party, there would be no formal conclusions by the Committee.

Initial report of Mozambique (CERD/C/111/Add.1)

54. Ms. SADIQ ALI, speaking as rapporteur for Mozambique, said that the Committee was reviewing the implementation of the Convention in Mozambique in the absence of a report from Mozambique and in the absence of a representative

of its Government. The first and last report submitted by Mozambique (CERD/C/111/Add.1) had already been considered by the Committee without the participation of a representative of the Government of the State party. The Committee had found the report to be excessively short and inadequate. Moreover, the report had not been drawn up in conformity with the guidelines established by the Committee for the submission of reports (CERD/C/70/Rev.1). The Committee had indicated that it was aware of the fact that as a frontline State subjected to the destabilizing activities of South Africa, Mozambique had had difficulties in preparing its initial report. It had invited the Government to submit its next report in conformity with the guidelines and to implement the principles and provisions of the Convention.

55. No further report had been received, presumably because of the civil war - one of the lengthiest in Africa - which had ravaged the country. That war had claimed at least one million lives and had driven another million people to seek refuge in neighbouring countries: more than half a million in Malawi and others in South Africa, Zimbabwe, Tanzania, Zambia and Swaziland. Further, it was estimated that there were approximately 1.4 million internally displaced persons living mainly in camps set up throughout the country.

56. Agricultural production had been seriously affected by the severe drought in the fertile province of Zambezia, a major food-growing area. The infrastructure had been completely destroyed by the continued attacks of the rebel Mozambique National Resistance (RENAMO); that had hampered production and internal trade. Some 5 million people - a third of the country's population - were estimated to be dependent on international food aid. The drought had become so critical in Mozambique that Mr. Charles Lamunière, the Director of the United Nations Department of Humanitarian Affairs, had said in September 1992 that unless food and water could be distributed rapidly, Mozambique could become another Somalia. Fortunately, the rains had come and the situation in Mozambique was less desperate. In the circumstances, it would be unrealistic to expect a report from Mozambique in the near future.

57. However, an event of historic importance had occurred on 4 October 1992 with the signing of the peace accord in Rome between FRELIMO, the party of Joaquim Chissano, and RENAMO, led by Afonso Dhlakana. The report had been welcomed with caution and restraint since there were fears that a pattern of events similar to those that had occurred in Angola might be repeated in Mozambique. For the moment, an uneasy compromise allowed RENAMO to maintain its current structures in the regions it controlled. However, a joint commission was to be established to provide a link between RENAMO-occupied areas and the central State administration until the first multi-party general elections were held in about a year's time.

58. In the meantime, a new Constitution containing 200 articles had been promulgated on 30 November 1990. It represented a major step towards safeguarding basic rights. It proclaimed political pluralism and the market economy.

59. The new Constitution had officially ended the leading role of FRELIMO, although the FRELIMO-dominated Government would remain in office pending the new elections. Fourteen new political parties had been formed. The new

Constitution called for a strong presidency, but it had also strengthened the legislature by allowing a two-thirds majority to override what was essentially a presidential veto. The Constitution gave the Supreme Court the power to review the constitutionality of legislation. RENAMO, however, had denounced the Government's unilateral implementation of the Constitution and legislation on political parties, and had indicated that it would negotiate changes in the Constitution.

60. The Constitution expressly prohibited torture; the Government had allowed international human rights organizations access to prisons. The Constitution prohibited discrimination. The Committee on the Elimination of Racial Discrimination should ask Mozambique to provide it with further information on the definition given to racial discrimination in the legislation enacted, in the light, in particular, of the definition of racial discrimination given in article 1, and the provisions of articles 2, 4, 5, 6 and 7 of the Convention.

61. There did not appear to be any systematic persecution on the basis of ethnicity or race. Nevertheless, the Government had tended to include at all levels a disproportionate number of southerners, mostly from the Shangana ethnic group. Whites, Asians and mixed-race Mozambican were also heavily represented in relation to their numbers in the population.

62. During its Sixth Congress, held in August 1990, FRELIMO had broadened its regional and ethnic base by creating slates of candidates for the Central Committee from all the 10 provinces.

63. The leadership of the RENAMO insurgents was predominantly from the Shona-speaking ethnic groups who lived near the frontier with Zimbabwe. Ethnic and regional factors might play some role and tribal factors might explain some of the violence, but RENAMO recruited from all ethnic groups and had not emphasized ethnic issues in its communiques or in its negotiating positions.

64. Racial issues had figured in political debates in 1991. During the discussion of the new nationality law, several members of the National Assembly had argued that Mozambican citizens should be limited to persons of black Mozambican origin, excluding Whites, Indians and persons of mixed race. However, the law, as promulgated, did not contain that definition.

65. Mozambique was in a difficult period of transition and the Committee could not expect a report from that country until the elections had been held, the situation had improved and the country had been cleared of mines. The international community and the Organization of African Unity must encourage the process of dialogue and ensure that Mozambique was put back on track. Maintaining peace would not be easy. The warring troops would have to be integrated into one army, jobs would have to be found, refugees would have to return and normal life would have to be restored. The refugees living in the neighbouring countries (approximately one million) would need help, at least during the first year following their return. Reconciliation, a particularly difficult issue, would require a great effort of will. The Pan-African

Conference, held in Dakar from 25 to 28 May 1992, held out some hope. The Conference had recommended, among other things, the adoption of the national charter which embodied a solemn undertaking by all the political protagonists to opt for a peaceful transition to democracy.

66. Mr. FERRERO COSTA agreed with Ms. Sadiq Ali that in view of Mozambique's difficult situation it would be unrealistic to expect that country to submit a report for the time being. The Committee was aware that serious violations of human rights were occurring and had no information about the implementation of the provisions of the Convention.

67. In the conclusions which would be transmitted to the State party, the Committee should therefore confine itself to indicating its deep concern at the situation prevailing in Mozambique and the violations of human rights that were occurring, expressing the hope that a peaceful solution would be found to the country's current difficulties. The Committee should also stress the fact that the civil war did not excuse Mozambique from respecting the provisions of the Convention, including that relating to the submission of periodic reports drawn up in conformity with the guidelines formulated by the Committee for that purpose.

68. Mr. de GOUTTES agreed with Mr. Ferrero Costa. Like Ms. Sadiq Ali, he thought that the case of Mozambique was somewhat unusual, since that country had only presented a single report, its initial one, in 1984, shortly after acceding to the Convention, and that at the time the report had been found by the Committee to be far too short.

69. The Committee must therefore remind Mozambique of the obligations that devolved upon it under the Convention, while drawing its attention to the fact that it could call on the advisory services of the Centre for Human Rights and of the Committee itself.

70. Mr. YUTZIS noted that members of the Committee who had spoken before him had stressed that the Committee should proceed not only in the light of the objectives of the Convention but also and above all the needs of the populations and States which were in an extremely difficult situation, often the legacy of the past. He shared that opinion. The Committee should consider Mozambique as a classic case: other similar situations would certainly arise. Clearly, the Committee could not remake history, but if it was to avoid a sentiment of helplessness, it should, in the context of its mandate, provide assistance to those who were beset by conflicts and suffered their consequences directly. It should therefore seek types of appropriate advisory services, standards ensuring the implementation of all promulgated legislation and methods of making States which were in difficulties understand that they had the possibility and the obligation to implement the Convention. All that came within the scope of the document on prevention recently adopted by the Committee.

71. The CHAIRMAN said that Ms. Sadiq Ali would submit comments on the situation of Mozambique in due course. As in the case of Chad, since there had been no report, there would be no formal conclusions by the Committee.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)

Draft general recommendation on discrimination in fact (continued)*

72. Mr. WOLFRUM said that the text which had been circulated (Draft general recommendation on art. 1, para. 1) replaced the draft general recommendation on de facto discrimination submitted by himself. In accordance with the suggestion made by the Committee when it had considered the first draft, the new draft recommendation was presented in narrative form. It endeavoured to take account of all the suggestions and opinions expressed in the Committee at that time.

73. He drew the Committee's attention to the penultimate sentence in paragraph 1 of the draft, which he read out. The last sentence of that paragraph referred to article 2 paragraph 1 (c) of the Convention. Paragraphs 2 and 3 endeavoured to take account of the concerns expressed by Mr. Lamptey at a time when the previous draft had been considered.

74. Mr. DIACONU, Mr. LAMPTEY and Mr. de GOUTTES supported the draft recommendation.

75. The CHAIRMAN said that if there was no objection, he would take it that the Committee approved the draft general recommendation on de facto discrimination.

76. It was so decided.

Draft general recommendation on the implementation of article 4 of the Convention

77. Mr. WOLFRUM introducing the draft recommendation in his capacity as co-sponsor with Mr. Banton, said that paragraph 1 of the text was somewhat narrative in form as it recalled certain matters relevant to the implementation of article 4 of the Convention.

78. Paragraph 2 referred to a constant practice of the Committee, that of reminding States parties that they had not only to enact legislation but also to ensure that it was enforced, and enforced effectively.

79. Paragraph 4, which should come after paragraph 2, recalled the four categories of conduct which should be penalized by law, in conformity with paragraph 4 (a) of the Convention. It was intended to avoid the confusion that had been noted in the reports of some States parties.

80. Paragraph 3, which was now paragraph 4, was the most important paragraph in the draft general recommendation since it referred to the relationship existing between the provisions of article 4 of the Convention and freedom of

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* Resumed from the 967th meeting.

opinion and expression. It should be amended by deleting, in the fourth sentence, the words "which are" and completing that sentence by the words ", among which the obligation not to disseminate racist ideas is of particular importance". In the following sentence "(2)" should be inserted after "article 20".

81. Paragraph 5 had been designed in order to rectify an omission in reports by States parties, namely, penalization of the financing of racist activities.

82. Paragraph 6 was intended to refute the argument adduced by some States parties, such as Denmark or the United Kingdom, which saw no need to declare illegal organizations coming under article 4 (b) of the Convention since they already penalized incitement to racial discrimination.

83. Finally, the text of paragraph 7 should be considered separately from that of the draft itself.

84. Mr. RECHETOV said that the expression "of the mandatory character" in paragraph 2 of the draft could give the impression that the other articles in the Convention did not have the same weight. It would therefore be appropriate to indicate the importance of article 4 (a) and (b) in some other way.

85. Turning to the first sentence in paragraph 3 of the draft, he agreed with the Committee that the prohibition of the dissemination of ideas based upon racial superiority or hatred was compatible with the right to freedom of opinion and expression. However, everyone was aware of the frequent conflict in practice between the act of prohibiting racial discrimination and the act of proclaiming the freedom of opinion and expression. It would be desirable to bring the text of the draft more closely into line with the actual situation.

86. On that basis, he supported the draft general recommendation.

87. Mr. FERRERO COSTA said that the draft recommendation was particularly important. He considered that it was not desirable to state in paragraph 1 of the draft that article 4 was the key article of the Convention. He proposed either deleting the reference or formulating it differently, for example, by describing article 4 as a "crucial" article.

88. In paragraph 3, the expression "is fully compatible" seemed to him to be questionable. He would suggest replacing the first sentence in the paragraph by: "In the opinion of the Committee, the prohibition of the dissemination of all ideas based on racial superiority or hatred should not be limited as a consequence of the right to freedom of opinion and expression".

89. Finally, he thought that the wording of paragraph 6 did not bring out the fact, set forth in article 4 (b), that States "shall declare illegal and prohibit organizations and ... propaganda activities which promote and incite racial discrimination". The paragraph should specify that associations whose objective was to promote or incite racial discrimination should be declared illegal automatically.

90. Mr. SONG Shuhua supported the draft under consideration. In paragraph 1, the description of article 4 as a key article of the Convention did not, in his view, pose any problem in that the Committee had already reached that conclusion on numerous occasions.

91. Furthermore, he considered that the reminder of the mandatory character of the provisions of article 4 (a) and (b) was all the more necessary since the principles in question appeared currently to be breached in many regions of the world, particularly in Europe.

92. Finally, he proposed replacing the expression "is fully compatible" by "is compatible" in paragraph 3 of the draft.

93. Mr. LAMPTEY approved the wording of the draft although he was not certain that such a recommendation was necessary.

94. Mr. de GOUTTES fully supported the draft general recommendation whose topicality seemed unquestionable. However, like other members of the Committee, he would prefer not to retain the expression "the key article" and proposed replacing it, for example, by "one of the key articles" or "a particularly important article".

95. Mr. DIACONU, referring to a comment made by Mr. Ferrero Costa on paragraph 6 of the draft, said it was difficult to declare certain organizations to be illegal at the outset because they might acquire statutes that were acceptable from the viewpoint of the Convention. In such a case, the prohibition could only be put into effect later, once the activities of those organizations had been recognized to be incompatible with the provisions of article 4.

96. Mr. YUTZIS said that he subscribed to the draft general recommendation. The wording of the first sentence in paragraph 3 seemed to him to be pertinent since some States did not appear to accept or understand the scope of the prohibition in question. With regard to paragraph 6 of the draft, he considered that the organizations referred to in article 4 (b) should be declared illegal at the outset.

97. Mr. GARVALOV supported the draft general recommendations submitted by Mr. Banton and Mr. Wolfrum. He did not find the expression "the key article" questionable and did not assume that the other articles in the Convention were relegated to a lower status. The last two sentences in paragraph 1 confirmed the importance of the article, particularly in the light of current events in certain parts of Europe.

98. The CHAIRMAN said that he assumed that, subject to certain amendments, the Committee was generally favourable to the draft general recommendation on the implementation of article 4 of the Convention. He therefore requested its sponsors, Mr. Banton and Mr. Wolfrum, to amend the text accordingly so that it could be reconsidered at a later date.

The meeting rose at 1 p.m.

CERD/C/SR.981
24 March 1993

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 981st MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 17 March 1993, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Twelfth periodic report of Poland (CERD/C/226/Add.2)

1. At the invitation of the Chairman, Mr. Dembinski, Mr. Kedzia and Mr. Kasana (Poland) took places at the Committee table.

2. Mr. DEMBINSKI (Poland) said the report (CERD/C/226/Add.2), which combined Poland's tenth, eleventh and twelfth periodic reports, described the legal situation in the country as of the beginning of 1992: no changes relevant to the subject of racial discrimination had taken place since that time.

3. Generally speaking, Polish legal norms did not contain any provisions which could be interpreted as discriminatory against any person or group on grounds of race, colour, national or ethnic origin. Articles 67 and 81 (2) of the 1952 Constitution, which established the principle of equality and prohibited the spreading of hatred or contempt based on racial differences, continued to be in force despite the abrogation of that Constitution by the Constitutional Act of October 1992.

4. It was stated in paragraph 3 of the report that the norms of international treaties ratified by Poland were not directly applicable in Polish law. In fact, that situation had changed following a decision by the Supreme Court in June 1992 that such norms would henceforth become applicable and binding, provided that they were self-executing. Unfortunately, the International Convention on the Elimination of All Forms of Racial Discrimination, which had been ratified before the constitutional amendment of April 1989, could not yet be considered as transformed into Polish law, but that situation should change with the adoption of the new Constitution, which was expected to put all human rights treaties ratified by Poland on an equal footing and make them part of the internal legal order irrespective of date of ratification.

5. No Polish laws made any distinction regarding the legal status of persons on grounds of race or origin. The Constitutional Court had ruled on several occasions that the principle of equality before the law constituted the very foundation of the State subject to the rule of law and was to be strictly respected by all State organs.

6. Poland had a comprehensive system of institutional guarantees of the rule of law based on the independence of the judiciary. Justice was administered not only through the courts, but also extrajudicially through the Commissioner for Human Rights or ombudsman, who was empowered to act not only in cases involving breaches of the law, but also in cases of violations of accepted principles of community life.

7. Cases of discrimination in Poland were few and were usually related to nationality rather than race. One such incident had occurred the previous year when a car accident involving a member of the Roma community had led to attacks on a number of citizens belonging to that community. Such acts were always condemned by public opinion and dealt with firmly by the authorities.

8. The fulfilment of Poland's obligations under the Convention involved not only combating human rights abuses, but also actively promoting human rights and preventing violations from occurring. That was being done through education, as well as by financial support for associations of national, ethnic or cultural minorities. A Service for National Minorities had recently been set up within the Ministry of Culture to deal with problems of minorities living permanently in Poland and the Sejm, or lower house of the Polish Parliament, had a Committee on Minority Issues.

9. In October 1991, Poland had ratified the first Optional Protocol to the International Covenant on Civil and Political Rights and, in January 1993, the European Convention on the Protection of Human Rights and Fundamental Freedoms. Poland also accepted the jurisdiction of the European Court on Human Rights, as well as the procedure whereby individual petitions could be submitted to the European Commission on Human Rights.

10. Mr. WOLFRUM, country rapporteur, thanked the representative of Poland for his introduction, which answered some of the questions he had been going to raise. The report was not fully in accordance with the Committee's revised general guidelines (CERD/C/70/Rev.2), which should be taken into account when the next periodic report was prepared.

11. The Committee would have liked fuller information on the legal situation in Poland with regard to the implementation of the Convention, since important changes had recently taken place in that respect. He had found Poland's third periodic report to the Human Rights Committee (CCPR/C/58/Add.10) much more informative on that point. The Government might consider drawing up a core document giving general information on the situation in the country which could be used in all human rights treaty bodies and would make the task of reporting easier.

12. Paragraph 4 of the report stated that some 100,000 to 800,000 Byelorussians were living in Poland: that figure seemed rather vague, presumably due to the fact that no census had been taken recently. Should one be taken, the Committee would be interested to learn the results. He understood that between 500,000 and 700,000 Germans were living in Upper Silesia and that, under an agreement between the Federal Republic of Germany and Poland in 1990, that minority enjoyed significant rights. He assumed that similar agreements had been concluded between Poland and its neighbours regarding other minorities. It had been reported that, in the 1990 local elections, groups organized by the Socio-Cultural Society had secured the German minority a strong representation in local government. The Committee would be interested to learn more about such groups, which reflected a very positive situation where minorities were concerned.

13. The Polish representative had stated in his introduction that articles 67 and 81 of the original Constitution, which were in full compliance with article 2 (1) (a) of the Convention, would be retained in the new Constitution. However, as he understood it, constitutional reform was still under way. The Committee would be glad to have further details on the matter in the next report.

14. According to paragraph 2 of the report, no definition of racial discrimination existed in the domestic legal system. He found that strange and wondered how in that case articles 67 and 81 of the Constitution could be properly implemented. Paragraph 3 stated that the provisions of conventions and other international instruments ratified by Poland were not incorporated into national law, but were, rather, considered as guidelines for lawmaking. The representative of Poland had explained that that situation had changed, but that the Convention on the Elimination of All Forms of Racial Discrimination was still an exception: he hoped that that discrepancy would soon be remedied.

15. Concerning article 2 of the Convention, paragraph 5 of the report stated that only eight persons had been convicted for dissemination of ideas based on racial superiority or hatred in a period of four years: that appeared to be a rather low conviction rate. In fact, that paragraph related not to article 2, but to article 4 of the Convention, and should be redrafted accordingly.

16. No real information was given in the report on the requirement in article 2 (1) (d) of the Convention for States to prohibit racial discrimination by any persons, group or organization, apart from the statement in paragraph 11 that racial discrimination did not exist in Poland. Such claims were very frequently made by reporting States, but the Committee invariably rejected them, since there were few countries in the world immune from racial discrimination. More information about the situation of Gypsies and Jews in Poland would be welcome.

17. In the context of article 4, the report should have been more informative about the Polish National Party, which sought to promote negative attitudes towards Jews and whose chairman had recently been put on trial for incitement to racial hatred.

18. The information provided in connection with article 5 of the Convention related only to legislation and not to the actual situation in the country. For example, paragraph 25 of the report simply stated that, under article 95 of the Constitution, every citizen had the right to vote, irrespective of national or racial origin, but did not go on to say that minorities were entitled to form their own political parties: in fact, in the October 1991 elections, the German minority had gained seven seats in the Sejm and one in the Senate. In general, the report could be criticized for giving insufficient information not on Poland's shortcomings, but rather on its achievements - contrary to the usual practice of reporting States.

19. The Committee would appreciate more information on the "limitations on the right to property" referred to in paragraph 26 of the report. Concerning the right to leave the country and to receive a passport mentioned in

paragraph 27, Poland's report to the Human Rights Committee stated that some 20,000 people left the country every year for economic reasons. It would be interesting to know whether those emigrants came from all parts of the country, whether their country of destination tended to be the same and whether or not they returned to Poland.

20. Paragraph 30 of the report, which concerned freedom of thought, conscience and religion, failed to mention the Act of 17 May 1989, which had been adopted by the Sejm on the subject and contained provisions on religious education in schools. Nor was mention made of the Association Act of 7 July 1989. It would also have been of interest to the Committee to know that Poland had ratified ILO Convention No. 111 on Discrimination in Employment and Occupation and that that Convention was reflected in the Employment Act of 1989. The ILO Committee of Experts had asked to be informed about how that Act was being implemented and the Committee would also welcome information on that score.

21. Not enough details were given on article 6 of the Convention: for example, it would be interesting to know more about the functions of the ombudsman. Little was said about the recent interesting changes in the organization of the judiciary. Similarly, no information was given about the educational system in connection with article 8 of the Convention, although the rights of national minorities to education were fully guaranteed under a Ministry of Education order of December 1988. Finally, the report should have mentioned that a National and Ethnic Minorities Commission had been set up to consider the situation of minorities in Poland and to take steps to help them exercise their rights - an impressive development. More details about the functions of that Commission would be welcome.

22. To sum up, the report as presented was a mere skeleton of a report and, in commenting on it, he had had to draw on other sources: the next report would need to be more informative. However, he would stress that he was critical only of the report, not of the actual situation in Poland.

23. Mr. de GOUTTES said that he welcomed the recent trend towards greater democracy in Poland. Poland's ratification of the European Convention on the Protection of Human Rights and Fundamental Freedoms and its acceptance of the jurisdiction of the European Court on Human Rights, as well as of the procedure whereby individual petitions could be made to the European Commission on Human Rights, were evidence that it had consolidated its status as a State subject to the rule of law and was now truly democratic.

24. He agreed with Mr. Wolfrum that the picture given in the report was less positive than the reality, a situation which the Committee encountered only rarely. Although it was true that the report was somewhat brief, it had many positive aspects.

25. The report was Poland's twelfth since its ratification of the Convention in 1968. It was frank in admitting in paragraph 2 that no definition of racial discrimination existed in domestic law and, in paragraph 3, that treaties ratified by Poland were not automatically incorporated into the legal

system and could not be directly enforced by the courts. However, he had noted with interest that, under the new Constitution, that restriction was to be abolished.

26. He was glad to see from paragraph 5 of the report that the Criminal Code made most of the activities listed in article 4 (1) of the Convention an offence. The statement in paragraph 7 that, under the new draft criminal code, racist offences would be categorized as offences against mankind, rather than as offences against public order, was of particular interest. While the number of convictions for such offences was not high, he pointed out that some reporting States did not provide any statistics at all on the subject.

27. He agreed with Mr. Wolfrum that more information was needed on the breakdown of the population by ethnic, religious and linguistic groups. The Committee would also need to know more about measures taken to ensure the protection of minorities and, in particular, about the role of the National and Ethnic Minorities Commission. It would be interested to learn the results of the inquiry by a special commission into acts of violence recently perpetrated against Gypsies in Poland and also to know what measures had been taken against political parties inciting to racial hatred, especially the anti-Jewish party referred to by Mr. Wolfrum.

28. Mr. DIACONU thanked the Polish delegation for its twelfth report, which contained many positive elements that showed that Poland's legislative and constitutional process was in constant evolution, as was true in other Eastern European countries. The report was, however, too brief and should have been more comprehensive; additional information had had to be obtained from other sources, including Poland's report to the Human Rights Committee.

29. The Committee would have liked more demographic data showing Poland's ethnic and racial situation and to know to what extent minorities were represented in the Sejm and in local government.

30. Poland's report to the Human Rights Committee referred to the existence of 200 schools without any indication of the type of schools and whether their number was sufficient; further information on those aspects was required, together with details of the cultural education provided and training in the languages of minority groups.

31. He also requested further information on administrative disputes in Poland and whether they were properly dealt with at all levels.

32. An article in the International Herald Tribune of 17 March 1993 had reported that the Sejm had adopted a law prohibiting abortion. Such a law was probably unique in Europe and he wished to know whether it was based on the concerns of the large Catholic majority in Poland and whether some of the country's many other religious groups did not regard it as a form of discrimination and a way of not taking different views into account.

33. Mr. RECHETOV thanked the Polish delegation for its comprehensive report, which, on the whole, was excellent. It explained how Poland was implementing the Convention and did not include information which had no direct bearing on

the work of the Committee. There were a number of shortcomings, however, which would undoubtedly be eliminated in the next report. It would be useful, for example, to have a clearer breakdown of population groups, preferably in table form, and a more complete picture of the national education system and the extent to which it reflected the interests of the different ethnic groups.

34. Article 274 of the Polish Criminal Code was of particular interest to the Committee, particularly because it had actually been applied. It was therefore surprising to read in paragraph 11 of the report that racial discrimination did not exist in Poland. He wished to know whether the figures given for the period 1986-1990 meant that little attention was now being paid to article 274 and why public insults and degradation, as referred to in paragraph 1, could be punished by a term of imprisonment not exceeding three years, whereas an act of assault, as referred to in paragraph 2, might result in only a six-month prison sentence. What was the rationale behind such penalties? He would like more information on the implementation of that article and the reasons why racial offences had been grouped with offences against mankind in the draft criminal code, as stated in paragraph 7 of the report.

35. Mr. SONG Shuhua thanked the Polish delegation for its comprehensive written report and oral introduction. He particularly wished to know whether Poland, like other European countries, had to deal with the problem of racial discrimination against immigrants and refugees, as well as against Gypsies and Jews.

36. Many changes had undoubtedly taken place during the six-year period covered by the report, but they had been referred to only very briefly, if at all. Paragraph 31, for example, simply stated that housing, public health, medical care and social security were guaranteed by the Constitution. Such a statement did not help the Committee understand the situation in the country and it was to be hoped that a clearer picture would be provided in Poland's next report, together with full population data and information on the education of minorities.

37. Mr. BANTON said that article 2 (1) of the Convention required States parties to pursue a policy of eliminating racial discrimination in all its forms. The Polish authorities might take that requirement into account in connection with any policy which the National and Ethnic Minorities Commission might adopt. Policies for the elimination of racial discrimination might even form part of a more general minorities policy. The authorities should therefore define that policy, put it in written form, bring it to the attention of the persons it was intended to protect and those who were required to implement it and decide which Government body was to be responsible for its coordination. The Committee would welcome further information on all those points in Poland's next report.

38. The Committee would also like more information on attitudes and behaviour towards Jews in Poland. During the last election, a number of political parties had apparently stated that one of the current political priorities in Poland was a solution to the Jewish problem. It had also come to light that a 1991 opinion poll on attitudes and behaviour towards Jews on account of

their ethnic origin had shown that, in a country almost devoid of Jews, where no lobby or Jewish organization with the slightest political ambitions existed, large numbers of persons feared that they were being governed by Jews. It was remarkable that such a small minority should have come to represent such a threat. That attitude should occupy a significant place in any policy for the elimination of discrimination based on ethnic origin.

39. He had taken that information from a publication entitled Anti-Semitism, World Report 1992, which also referred to incidents reported in 1991, including the throwing of tear-gas grenades at the Israeli consulate and the desecration of tombstones in the Jewish cemetery in Warsaw, the only incident to have been officially condemned by the Polish authorities. Reports of that kind called for some comment by Poland and he hoped that it would provide further information at the current session and in its next periodic report.

40. Mr. GARVALOV congratulated the Polish delegation on its cooperation with the Committee and on the additional information it had made available and said that he fully endorsed Mr. Wolfrum's comments on the report. Now that Poland had broken away from the legacy of its past and was on its way to establishing a democratic society, the authorities should have submitted a more detailed report that was more sensitive to the ideals the Committee was promoting.

41. The Committee could not accept, for example, the statement that racial discrimination did not exist in Poland, knowing only too well from its consideration of the reports of some 132 States parties that that claim could never be upheld. It had been somewhat disturbing to hear that, under the Constitution, human rights instruments could not be part of domestic law, although changes were being introduced with regard to the European Convention on Human Rights. In that respect, the Polish authorities seemed to be discriminating against the International Convention on the Elimination of All Forms of Racial Discrimination and it was to be hoped that that situation would change once the new Constitution had been adopted.

42. Paragraph 4 of the twelfth report contained some figures on the Ukrainian, Byelorussian and Jewish populations of Poland. Some years previously when an earlier Polish report had been discussed, a question about the German minority had been raised and the Committee had not received a sufficiently detailed reply. It was therefore surprising that no mention had been made in the twelfth report of the German minority. In addition to information on that group, he asked whether the Polish Constitution allowed the establishment of political parties and organizations on racial, ethnic and religious grounds.

43. Recent reports had stated that Vietnamese living in some countries of central and eastern Europe were receiving discriminatory treatment. He wished to know whether that was the case in Poland.

44. Lastly, the statement in paragraph 4 of the report that it was State policy not to include questions pertaining to nationality or race in any questionnaire or survey because they might be of a discriminatory nature might

in itself be considered discriminatory because it meant that individuals were being denied the right to self-identification and to say whether or not they wished to belong to a certain group.

45. Mr. DEMBINSKI (Poland), replying to questions asked by the members of the Committee, said that a possible explanation for the difference between the twelfth report and earlier reports was that they had been prepared by different persons in different Government departments. The problem of racial discrimination in Poland stemmed from the traumatic events of the past, with the result that racial questions were viewed very narrowly. Moreover, three-and-one-half years had elapsed since Poland's transition from a communist society to an open one. Under the communist system, legislation on racial discrimination had been clear, but acts of discrimination had been concealed. The present authorities were unsure how to deal with visible acts of discrimination and it would be some time before a consistent policy existed. The same might be true of the abortion issue: there had been a very strict law before the Second World War, but, during the 1950s, a very liberal law had been introduced by the communists. The present law was undoubtedly a reaction to the anti-Catholic and anti-religious attitudes of the communist regime and was a compromise which had been adopted to avoid political crisis.

46. Mr. Banton had raised the question of attitudes and behaviour towards the Jews in Poland. It had been said, rightly or wrongly, that, in Poland, there were anti-Semitic tendencies without any Jews. As with other emerging trends, it was important to view the problem from a historical perspective. The Government was examining the issue. It should be kept in mind that acts which might have not been reported in the past were currently receiving more attention.

47. He thanked the members of the Committee for their comments. His delegation would attempt to answer their questions in more detail at the Committee's next meeting. It would also transmit the Committee's observations and criticisms to the authors of the report.

48. The CHAIRMAN said he hoped that more detailed replies would be given in Poland's next periodic report.

49. Mr. Dembinski, Mr. Kedzia and Mr. Kasana (Poland) withdrew.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)

Draft general recommendation on article 1 (1) of the Convention (concluded)

50. The CHAIRMAN said that Mr. Ferrero Costa had requested the reopening of the debate on the draft general recommendation on article 1 (1), which had been adopted by the Committee that morning.

51. Mr. WOLFRUM said that Mr. Ferrero Costa was objecting to the wording of paragraph 2, which read:

> "The Committee observes that not every differentiation of treatment will constitute discrimination if the criteria for such differentiation are reasonable and objective, and if the aim is to achieve a purpose which is legitimate under the Convention."

52. That wording had been based on a recommendation relating to discrimination adopted by the Human Rights Committee and, consequently, he did not see how it could be amended. Nor did he believe that the paragraph as it stood would in any way limit the scope of the Convention.

53. The CHAIRMAN pointed out that, because the Committee lacked a quorum, any amendments made at its current meeting would have to be adopted later.

54. Mr. FERRERO COSTA said that, naturally, all members of the Committee were working together in good faith. Nevertheless, the fact that a very large number of documents, many of which were distributed in English only, had to be considered in a short period did cause difficulties at times. That had been the case with regard to paragraph 2 of the recommendation under consideration: he had not noticed that the wording might give rise to some difficulties. He pointed out that the Committee was not applying its rules of procedure very strictly; under those rules, only documents distributed in the four working languages could be adopted.

55. While he appreciated the explanation offered by Mr. Wolfrum, he was still not fully convinced about paragraph 2. The text before the Committee had originally been a draft general recommendation on discrimination in fact. Yet, paragraph 2 related to non-discrimination in fact. Furthermore, the paragraph was expressed in terms which were too general and could therefore give rise to inaccurate interpretations of the definition of racial discrimination contained in article 1 (1) of the Convention. It was unwise to draft paragraph 2 in such a way that it could be interpreted as asserting that discrimination did not exist in any case of differentiation of treatment if such treatment had been based on criteria that were "reasonable and objective". Those very words "reasonable and objective" were too broad, even though they were qualified by the words "if the aim is to achieve a purpose which is legitimate under the Convention".

56. The CHAIRMAN said that the Committee often had to work with texts in a single language. If it abided strictly by the rules of procedure, it would be unable to carry out its work in the time allotted.

57. Mr. BANTON said that paragraph 2 had been incorporated into the recommendation on the basis of what had been said during the debate by a number of members of the Committee. There had to be some basis on which the reasonableness of an exception could be considered objectively. Several examples of reasonable grounds could be mentioned: in the United States and Canada, for example legislation allowed for differentiation of treatment in certain business relations. The issue was a complicated one and the Committee had to indicate clearly, for the benefit of the States parties, that it

recognized the practical problems which could arise in particular circumstances. Furthermore, borrowing the wording of paragraph 2 from the Human Rights Committee meant that the Committee would be acting in harmony with the other treaty bodies.

58. Mr. SHAHI said he also considered that paragraph 2 was too general. It would be preferable to provide concrete examples of reasonable and objective criteria; otherwise, there was a danger that the paragraph would be given a broader interpretation than that intended by the authors. However, since the wording was based on that used by the Human Rights Committee, he would not object to it.

59. Mr. WOLFRUM said that he fully agreed with Mr. Banton's views. Certain forms of differentiation of treatment were necessary in the course of everyday life. If the Committee considered all cases of differentiation of treatment as discrimination, it would clearly be overstepping the boundaries of the Convention and any other instrument relating to non-discrimination.

60. The prohibition of discrimination was the counterpart of the principle of equal treatment, under which equal cases had to be treated equally and unequal cases had to be treated unequally. The question was how to determine into which category a particular case fell. Certain forms of differentiation were not justified, as set forth in article 1 (1) of the Convention. However, the prohibition of discrimination could not be taken to mean the exclusion of all forms of differentiation - and that was exactly the point of paragraph 2 of the recommendation. He would be glad to make the paragraph more concrete, but did not see any appropriate way to do so.

61. The recommendation did not have anything to do with those special measures, as provided for in article 1 (4), taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups; if the Committee so wished, it could include a statement in the text to the effect that the recommendation was without prejudice to article 1 (4).

62. Mr. Ferrero Costa had implied that he had tried that morning to rush the recommendation through to adoption. The draft recommendation had been available for the past two days and members had had plenty of time to read it; he did not wish to be perceived as having tried to force the Committee's hand.

63. Mr. DIACONU said that the Committee must ensure that general recommendations corresponded to the Convention and to the views of the other committees dealing with human rights; otherwise, States parties might be confused by a lack of consistency.

64. Paragraph 2 of the recommendation under consideration was based on a recommendation of the Human Rights Committee, which had itself used the definition of discrimination contained in the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee had no reason to amend paragraph 2 unless it failed to conform to the Convention, in which case the matter should be taken up with the Human Rights Committee.

65. Mr. de GOUTTES said that he found the general recommendation acceptable as it stood. However, he agreed that the Committee had to guard against wrong interpretations. The question raised by Mr. Ferrero Costa was certainly worthy of the Committee's attention. Paragraph 2 should obviously not be worded so as to give rise to an interpretation that was contrary to the provisions of the Convention. Article 1 (1) of the Convention defined the term racial discrimination, thus stating the general rule on which the Convention was based. The only exceptions to that general rule were those referred to in article 1 (2), (3) and (4). It was true that, viewed outside that context, paragraph 2 might be interpreted in a way which did not correspond to the Committee's views. It might therefore be preferable to reword the paragraph more carefully or even to delete it entirely.

66. Mr. FERRERO COSTA said that he had never meant to imply that Mr. Wolfrum had tried to rush the recommendation through the Committee. He could not emphasize strongly enough that it had never been his intention to cast any doubts on Mr. Wolfrum's actions.

67. The issue at hand was simply a matter of how the recommendation might be interpreted. He was concerned that paragraph 2, as it stood, might be open to a broader interpretation than had been intended. He requested the Committee to give further consideration to the wording of that paragraph.

68. Mr. SHAHI said that his earlier statement should not be construed as a criticism of the efforts by Mr. Banton and Mr. Wolfrum to clarify the meaning of article 1 (1).

69. He proposed that, in paragraph 2 of the recommendation, the words "and non-discriminatory" should be inserted after the words "reasonable and objective".

70. Mr. DIACONU said that adding the word "non-discriminatory" would not really clarify the meaning of the paragraph.

71. In his country, there were many examples of differentiation of treatment based on reasonable and objective criteria. For example, the history of Romania was always taught in the Romanian language. He pointed out that, when differentiation of treatment existed, it was generally favourable to minority groups.

72. Mr. BANTON said that, as he had mentioned earlier, he hoped to be able to distribute at the Committee's August session a set of all the general recommendations relating to the Committee's reporting function, together with indications of other recommendations that might be included in a final set. Presenting the material in that way would enable the members to review each part for consistency with the whole and to make appropriate amendments. It would be best to return to the question raised by Mr. Ferrero Costa at that time. He therefore proposed that the Committee should postpone its decision on any amendment to paragraph 2 of the recommendation on article 1 (1).

73. Mr. WOLFRUM suggested that paragraphs 2 and 3 should be combined and that the first sentence should be amended to read:

> "2. The Committee observes that a differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged upon the objective and purpose of the Convention, are legitimate or fall within the scope of article 1, paragraph 4, of the Convention. In considering the criteria ...".

The existing paragraph 4 would then become paragraph 3.

74. Mr. FERRERO COSTA and Mr. YUTZIS said that they supported the proposed changes.

75. Mr. BANTON suggested that the words "judged upon the objective and purpose of the Convention" should be replaced by the words "judged against the objectives and purposes of the Convention".

76. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee adopted the draft general recommendation on article 1 (1), as orally amended.

77. It was so decided.

Draft general recommendation on the implementation of article 4 of the Convention (continued)

78. Mr. WOLFRUM read out the draft general recommendation, which had been revised in the light of members' comments:

> "Draft general recommendation on article 4
>
> "1. When the International Convention on the Elimination of All Forms of Racial Discrimination was being adopted, article 4 was regarded as central to the struggle against racial discrimination. At that time there was a widespread fear of the revival of authoritarian ideologies. The proscription of the dissemination of ideas of racial superiority, and of organized activity likely to incite persons to racial violence, was properly regarded as crucial. Since that time the Committee has received evidence of organized violence based on ethnic origin and the political exploitation of ethnic difference. So implementation of article 4 is now of increased importance.
>
> "2. The Committee recalls its General Recommendation VII in which it explained that the provisions of article 4 are of a mandatory character. To satisfy these obligations, States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced. Because threats and acts of racial violence easily lead to further such acts and generate an atmosphere of hostility only immediate intervention can meet the obligations of effective response.

> "3. Article 4 (a) requires States parties to penalize four categories of misconduct: (i) the dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; (vi) incitement to such acts.
>
> "4. In the opinion of the Committee, the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression. This right is embodied in the Universal Declaration of Human Rights (art. 19) and is recalled in ICERD article 5 (d) (viii). Its relevance to article 4 is noted in the article itself. The citizen's exercise of this right carries special duties and responsibilities, specified in article 29 (2) of the Universal Declaration, among which the obligation not to disseminate racist ideas is of particular importance. The Committee wishes furthermore to draw to the attention of States parties article 20 of the International Covenant on Civil and Political Rights, according to which any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.
>
> "5. The same paragraph penalizes the financing of racist activities, which the Committee takes to include all the activities mentioned in paragraph 3 above, that is to say, activities deriving from ethnic as well as racial differences. The Committee calls upon States parties to investigate whether their national law and its implementation meets this requirement.
>
> "6. Some States have maintained that in their legal order it is inappropriate to declare illegal an organization before its members have promoted or incited racial discrimination. The Committee is of the opinion that article 4 (b) places a greater burden upon such States to be vigilant in proceeding against such organizations at the earliest moment. They, as well as organized and other propaganda activities, have to be declared illegal and prohibited. Participation in these organizations is of itself to be punished.
>
> "7. Article 4 (c) outlines the obligations of public authorities. Public authorities at all administrative levels, including municipalities, are bound by this paragraph. The Committee holds that States parties must ensure that they observe these obligations and report on this."

79. In the revised draft, he had removed the reference in paragraph 1 to article 4 as the "key article" of the Convention, in the light of members' misgivings. Paragraph 2 had been amended to refer to article 4 as a whole, rather than to subparagraphs (a) and (b) alone. Paragraph 3 of the earlier version had become paragraph 4 of the new version.

80. Some members had been concerned that paragraph 6 might not be sufficiently clear to readers who were not fully familiar with the text of the Convention. For that reason, a new sentence ("They, as well as organized and other propaganda activities ...") had been included, which closely followed the wording of article 4 (b) of the Convention.

81. The CHAIRMAN said that the Committee seemed to approve of the proposed changes and suggested that it should adopt the draft general recommendation when enough members were present to constitute a quorum.

82. It was so decided.

Draft general recommendation on the implementation of article 9 of the Convention (CERD/C/1993/Misc.3) (continued)*

83. Mr. DIACONU read out the revised draft general recommendation, as contained in document CERD/C/1993/Misc.3:

"Draft general recommendation on article 9

> "1. Under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties have undertaken to submit to the Secretary-General of the United Nations, for consideration by the Committee, reports on measures adopted by them to give effect to the provisions of the Convention.
>
> "2. It is noted, however, that some reports refer not only to the situation in the States parties which are their authors, but also to situations concerning racial discrimination in other States parties.
>
> "3. Since this is not in accordance with the Convention and may well create difficulties in the work of the Committee, States parties are reminded that the written reports submitted should concern solely the situation in regard to the implementation by them of the Convention.
>
> "4. Should a State party consider that another State party is not giving effect to the provisions of the Convention, States parties are reminded that article 11 allows them to bring the matter to the attention of the Committee, in accordance with the procedure described therein."

84. Mr. WOLFRUM said that he welcomed the idea behind the draft recommendation, but considered that States parties might find it too negative. Surely it would be better to approach the issue from the viewpoint of article 11 of the Convention, rather than of article 9.

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* Resumed from the 978th meeting (second part).

85. Mr. YUTZIS said he agreed that the reference to article 11 should not appear merely as a reminder at the end of the general recommendation. The text should begin with a reference to the fact that, if a State party considered that another State party was not implementing the Convention properly, it could appeal to the Committee under article 11 of the Convention.

86. Mr. LAMPTEY said that the Committee must decide, once and for all, whether it wanted to adopt general recommendations on all aspects of the Convention - in which case the present draft was entirely appropriate - or whether it wished to keep general recommendations to a minimum. It would be quite wrong to place any more emphasis on article 11 than the present draft recommendation already did. Article 9 referred to the obligation of States parties to report on the implementation of the Convention in their own territory. Article 11, on the other hand, dealt with complaints by States parties about another State party's implementation of the Convention; that was an optional procedure and, indeed, no State party had ever actually followed it, as far as he knew. There was no need for the Committee to provide an interpretation of article 11, which was quite clear as it stood.

87. Mr. YUTZIS said that it was important to maintain the reference to article 11, even though no State party had yet chosen to invoke that article. The draft recommendation was intended to describe the procedure States parties should follow if the question ever arose.

88. Mr. DIACONU said that his main concern had been to deal with the reports of States parties on their own implementation of the Convention and to discourage them from discussing the situation in other States parties in their periodic reports. He certainly did not want to give too much prominence to article 11.

The meeting rose at 6.05 p.m.

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28 July 1993

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 982nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 18 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Twelfth periodic report of Poland (CERD/C/226/Add.2) (continued)

1. Mr. KEDZIA (Poland) expressed gratitude to the Committee, whose comments would provide valuable guidelines for the Polish Government in the preparation of its reports. He would do his best to reply to the questions raised and would later furnish any additional information requested.

2. Regarding Mr. Garvalov's comment on the statement, that "racial discrimination does not exist in Poland" (para. 11), he said that the author of the report had meant that both official policy and the legislation were aimed at combating discrimination. Unfortunately, racial discrimination and intolerance had not been entirely eliminated from the behaviour of certain marginal groups in Poland.

3. Mr. Wolfrum had expressed some criticism of a passage from paragraph 2 of the report, which stated that "the definition of racial discrimination as specified in article 1 of the Convention has not been incorporated into the domestic legal system". The author of the report had meant to say that the definition had not been incorporated into the national legal system word for word. Article 1 of the Convention had a definite influence on the perception of racial discrimination in Poland. International human rights standards, including those laid down in the International Convention on the Elimination of All Forms of Racial Discrimination, had provided a frame of reference for those who had acted in favour of democratic change in the recent past.

4. Mr. de Gouttes and Mr. Rechetov had noted, in paragraph 7 of the report, that racial discrimination was classified as an offence against mankind. He drew the attention of the members of the Committee to chapter 16 of the draft Penal Code, entitled "Crimes against peace and mankind and war crimes", which also covered offences of a racial nature. The lawmakers had wanted to emphasize the seriousness of such offences and the need to combat them. However, the legislation in question was only a bill and had not yet been submitted to the Diet.

5. With regard to the status of the Convention in respect of internal law, Mr. Wolfrum and Mr. Garvalov had expressed disappointment that the Convention was not directly applicable in Poland under the Constitution. That was certainly unfortunate, but he noted that, according to the 1952 Constitution, the provisions of conventions and other international instruments ratified by Poland were in fact not incorporated into the national legal system by the sole act of ratification (para. 3). However, according to a 1989 constitutional amendment and the Supreme Court's interpretation of that text in June 1992, the President was empowered to ratify international treaties and the Diet's consent was needed only if those instruments required laws to be amended or imposed financial obligations on the country. As soon as they were ratified, those laws were published in the Journal of Laws. They then became an integral part of internal law and were therefore binding. The

International Convention on the Elimination of All Forms of Discrimination and the other international human rights instruments, including the two Covenants, had not been ratified under those new legal provisions and could therefore not be considered as forming an integral part of the national legal system. But that in no way lessened the importance of those instruments, to which the Constitutional Court, the Administrative Court and the Ombudsman often referred.

6. Concerning the extensive restructuring of the administration of justice, on which Mr. Wolfrum and Mr. Diaconu had requested additional information, he noted that new bodies for protection had been established in the 1980s: the Supreme Administrative Court in 1980; the Constitutional Court in 1986; and the Commissioner for Civil Rights - the equivalent of the Ombudsman - in 1987. It should be noted that the Ombudsman also dealt with non-citizens living under Polish jurisdiction. More recently, the Supreme Administrative Court had been empowered to examine the lawfulness of most administrative decisions; the independence of the judiciary had been ensured through new guarantees (irremovability and autonomy of judges); and the Minister of Justice now had the functions of Procurator-General, which had previously been performed by a public prosecutor's department closely linked to the Ministry of the Interior.

7. Replying to a question asked by Mr. de Gouttes, Mr. Garvalov, Mr. Rechetov and Mr. Wolfrum about national and ethnic minorities in the demographic composition of Poland, he said that, according to estimates by the Ministry of Culture, which was in charge of coordinating policy on minorities, the country had 300,000 Ukrainians; 200,000-250,000 Byelorussians; 200,000-500,000 Germans (the significant difference in those estimates was the result of disparities between data sources and methods of calculation); 20,000-25,000 Lithuanians; 15,000 Jews; 15,000 Greeks and Macedonians; and 3,000 Russians, Tatars, Karaites, Armenians and Czechs. Ethnic minorities therefore represented approximately 1,100,000 inhabitants out of a total population of 40 million Poles.

8. The difficulty in making demographic estimates was that the Communist regime had attempted for decades to eliminate the minority problem administratively by invoking the moral and political identity of the nation. In addition, some people were afraid that they would attract problems if they said that they belonged to a particular group. For the time being, priority was being given to preparing a system for the legal protection of minorities, independently of the potential number of individuals composing them. In that connection and in reply to a question by Mr. de Gouttes and Mr. Wolfrum, he said that there were two opposing theories, one in favour of the adoption of a special status for the protection of minorities and the other against it. The minorities themselves were divided on that question. There were also provisions on the protection of minorities in the text of the new Constitution and Poland had recently concluded treaties and bilateral good neighbour agreements - in particular with Poland, the Ukraine, Belarus and Lithuania - that contained detailed provisions on the protection of minorities.

9. Referring to Mr. Wolfrum's question on minorities' participation in representative bodies at the local and national levels, he said that local administration in Poland was based on the principle of autonomy and that the

representatives of minorities were members of the local diets. Minorities were also represented in both chambers of the Diet. To facilitate access to the Diet, under a 1991 electoral law, minority candidates proposed by the electoral boards were registered according to less stringent criteria than the others.

10. In reply to a question raised by Mr. Banton, Mr. de Gouttes and Mr. Wolfrum, he said that the Committee on National and Ethnic Minorities of the Sejm (lower chamber of the Diet) had been established immediately after the political changes in 1989. It was the successor of the Commission on Minority Issues, an unofficial body of the Solidarity political opposition movement. That standing parliamentary committee dealt with all questions relating to the protection of minorities, in particular the question of the draft statute on the protection of minorities.

11. Replying to a question by Mr. Banton, he said that the department of the Ministry of Culture in charge of national minorities coordinated activities relating to minorities at the Government level. Among other duties, it dealt with official policy on minorities, which was based on the principles of the protection of minorities, liberties, affirmative action and the autonomy of minority organizations, movements and associations.

12. With regard to access by minorities to education, a question raised by Mr. Diaconu, Mr. Rechetov, Mr. Song Shuhua and Mr. Wolfrum, he said that there were no restrictions on instruction in minority languages, which depended on need and the available material resources. For example, since 1 September 1992, German had been taught as the first language in seven schools and as a foreign language in 170 schools in areas inhabited by the German minority; three primary schools and three general secondary schools taught Ukrainian; and Byelorussian was taught in 48 primary schools and 2 secondary schools.

13. Emigration, about which Mr. Wolfrum had asked, primarily concerned nationals of German origin and Gypsies. However, he did not have any specific data on the subject.

14. Replying to another question by Mr. de Gouttes, he said that there were 10,000-15,000 Gypsies living in Poland. A magazine published in the Gypsy language had been launched with State aid. Special classes were also organized for the numerous Gypsy children who did not attend school. The Gypsy language was not taught in the schools, for it did not appear to be necessary given that community's lifestyle. On another matter, the Mlawa incident, in which several inhabitants of that community had attacked Gypsies, had occurred in March 1992 following a traffic accident caused by a Gypsy driver. Those events had been condemned by public opinion, the authorities and the press.

15. Turning to the convictions handed down in cases involving racial discrimination, about which Mr. Wolfrum and Mr. Rechetov had requested further information, he referred to four cases: on 26 May 1985, the court at Cracow had handed down a suspended sentence of 18 months in prison for blows and insults to a Nigerian because of his race, in conformity with article 274,

paragraphs 1 and 2, of the Penal Code; on 13 August 1986, the court at Lublin had handed down a suspended sentence of 12 months in prison for insults to a group of children from the German Democratic Republic because of their German nationality, in conformity with article 271, paragraph 1, of the Penal Code; on 3 October 1987, the court at Cracow had handed down a suspended sentence of 10 months in prison for insults to Palestinians and Iraqis because of their race, in conformity with article 274, paragraph 1, of the Penal Code; and on 20 August 1987, the court at Bytom had handed down a sentence of 18 months of limitation of liberty for insults to two persons because of their Polish nationality, in conformity with article 274, paragraph 1, of the Penal Code. "Limitation of liberty" meant that a person had to report once a week to a police station, request authorization to change domicile and perform work of public importance.

16. Concerning regulations for religious freedom, about which Mr. Wolfrum and Mr. Diaconu had raised questions, he explained that, in June 1989, a law on religious freedom and laws on the status of the Catholic and Orthodox churches had been adopted. A law on the status of Protestant churches was being prepared. Religious instruction had been introduced into school curricula under article 12 of the Education Act of 1991. At the primary school level, parents decided whether or not their children should be given religious instruction; at the secondary level, the decision was taken jointly by parents and children. Parents and children were also entitled not to take advantage of those opportunities; for example, children could take religion courses organized in their religious communities outside the educational system. The Constitutional Court had confirmed the legality of the regulations adopted.

17. With regard to the law on abortion, he said that the bill on the protection of life after conception, which had been aimed at completely prohibiting abortion except in cases where the life of the mother was directly threatened, had given rise to violent political controversy. Ultimately, a compromise had been reached and a law on the protection of the foetus and sexual education had been adopted in early 1993. It permitted abortions in cases where the life or health of the mother was endangered and in cases of rape and incest. Abortion for so-called social reasons was prohibited. At first glance, the law was not at variance with the protection of any particular national, ethnic or religious minority, but there would have to be some court decisions before a more thorough assessment could be made.

18. In reply to Mr. Wolfrum, Mr. de Gouttes and Mr. Garvalov concerning the measures taken against organizations and parties having racial objectives, he explained that, after decades of communist rule, Poland was still at the early stages in the establishment of a party system. The general stance adopted was to limit State interference in that process as much as possible. The need for freedom for political parties was confirmed by the fact that there were now more than 180 active parties in Poland. However, they were mostly very small parties with no political influence. That was the group to which the Polish National Party, led by Mr. Tejkowski, belonged. Because of Mr. Tejkowski's statements and other activities, criminal proceedings had been brought against him, but they had not yet been concluded. The 1990 Political Parties Act allowed the Constitutional Court to declare a political party

unconstitutional. If a political party had the goal of changing the constitutional order by force, it could be outlawed. The Associations Act provided for similar restrictions for organizations other than political parties. The State authorities also had legal means at their disposal to combat organizations and political parties which violated the prohibition against racial or national hatred and fostered racial discrimination. Obviously, restrictions on the freedom of political parties and other associations could be imposed only in accordance with a lawful procedure in keeping with other elements in the legislation. The State should be cautious in such matters.

19. Replying to a question by Mr. Song Shuhua on the risks of racial discrimination resulting from migrations, he said that Poland had been receiving a large number of foreigners for some time. Although it was generally considered to be a transit country, that did create problems, particularly for persons who crossed Polish territory seeking asylum in Western European countries. With the exception of isolated acts, however, there were no negative or discriminatory attitudes towards foreigners in Poland. Poland also played an active role in international efforts to assist refugees from the former Yugoslavia, in particular by receiving 1,000 children. He added for Mr. Garvalov's benefit that, to his knowledge, there had been no problems of discrimination against Vietnamese in Poland; there were no Vietnamese immigrant workers in the country.

20. Mr. RECHETOV thanked the representative of Poland for his information, but said he had the impression that the International Convention on the Elimination of All Forms of Racial Discrimination did not have as high a status in Poland as other human rights instruments.

21. He would like the next report to contain more detailed information on the teaching of languages other than Polish. The Polish representative had spoken of doubts as to the need to study the Romany language. It was possible that members of that ethnic community themselves had doubts and thought more in terms of assimilation, but any complacency about the linguistic status quo should be avoided.

22. He understood that foreigners transiting through Poland might create some problems and cause some negative feelings among the local population. He pointed out, however, that the word "refugee" should not be used when speaking of such persons, for the word had a different meaning in international law; it was more appropriate to speak of migratory phenomena.

23. He thanked the representative of Poland for providing specific information on the convictions for racial discrimination handed down under article 274 of the Penal Code. Regarding the incidents involving Gypsies, it was obvious that they had racist connotations. The initial statement by the representative of Poland that racial discrimination had not been completely eliminated in his country might not have been an accurate reflection of a situation that was in fact a bit more serious.

24. Mr. WOLFRUM said that the information just provided by the representative of Poland rounded out that country's periodic report; it was to be hoped that it would be incorporated into the next report. Regarding minorities, he noted that, according to the Committee's General Recommendations, members of such groups must identify themselves as belonging to minority groups. He agreed with Mr. Rechetov that there should be more information on the teaching of languages other than Polish in the educational system. By way of comparison, the Gypsy language was taught in Hungary and in Finland. The information supplied should also relate to higher education. Lastly, he would like to have further information on other subjects, such as the status of the Convention, the institution of the Ombudsman, etc.

25. Mr. GARVALOV thanked the representative of Poland for his reply to the question he had asked about the Vietnamese. He would like to know whether legislation allowed political parties with ethnic aims. They were legal in some countries and illegal in others. In Bulgaria, for example, there was an ethnically-based political party that was represented in the Parliament and another had just been established, but was not yet registered. He agreed with Mr. Rechetov that the International Convention on the Elimination of All Forms of Racial Discrimination had inferior status, since it could not be invoked directly before the courts as other instruments could. That situation should be corrected in the future.

26. Mr. de GOUTTES noted that Poland had acceded to the European Convention on Human Rights and had made the declaration under that instrument concerning petitions from individuals, and that could be interpreted as a sign that the democratic system was firmly in place in Poland. However, it had not made the declaration provided for in article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. It would be faulty reasoning to think that it was not necessary to do so because the declaration provided for in the European Convention was sufficient.

27. Mr. DIACONU said that he also wished to thank the representative of Poland for his replies and that the dialogue that had just taken place had been quite useful, for both the Committee and the delegation. Account should be taken of Poland's particular historical, geographical and political features and the fact that the country was going through a period of transition. He hoped that the comments of the members of the Committee would be taken into consideration by the Polish authorities and that the next report, to be submitted in two years, would contain a new description of an evolving situation.

28. The CHAIRMAN invited the Polish delegation to reply to the last questions raised.

29. Mr. KEDZIA (Poland), replying to the question on the Romany language, said that the Romish population in his country was a nomadic population, whose children had difficulties attending school. The authorities were in a dilemma because they did not wish to interfere with that lifestyle. However, they were developing special courses in that language for the regular schools. Mr. Wolfrum had made a comparison with Hungary, but the Gypsy population in Hungary was much larger and concentrated in one region, and that solved the school problem.

30. Replying to a question by Mr. Wolfrum, he said that the teaching of foreign languages had been neglected in the last 10 years and that Poland was considerably behind other countries in that field. That was why new schools had been established for training language teachers. He noted that the minority languages were also taught at university.

31. The law did not prohibit the formation of political parties on ethnic grounds. It simply said nothing on the subject.

32. The international treaties ratified by Poland, in particular the Convention, would be directly applicable under the new Constitution and would have higher authority than the laws adopted by the Diet.

33. However, incorporating instruments into domestic law was not sufficient. Judges, lawyers, the public and everyone involved in the administration of justice had to be educated in order for direct applicability to become a reality. That was why the Polish authorities had set up a training programme for judges in human rights legislation.

34. Replying to a question by Mr. de Gouttes, he said that generally speaking the Polish authorities recognized the right of individuals to go before international bodies to avail themselves of their rights. In 1991, Poland had ratified the Optional Protocol to the International Covenant on Civil and Political Rights, and it had also recognized the competence of the European Court of Human Rights to consider petitions from individuals. It was for technical reasons only that Poland had not yet made the declaration provided for in article 14, paragraph 1, of the Convention on the Elimination of All Forms of Racial Discrimination.

35. In conclusion, he said that the observations and recommendations of the members of the Committee would be very useful to the Polish authorities.

36. The CHAIRMAN thanked the Polish delegation for its spirit of cooperation.

37. The Polish delegation withdrew.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (continued)

Draft general recommendation on the implementation of article 4 of the Convention (concluded)

38. The CHAIRMAN said that the draft general recommendation had had to be adopted provisionally at the preceding meeting because there had been no quorum. Since there was a quorum now, he would take it that, if he heard no objection, the Committee adopted the draft general recommendation in final form.*

39. It was so decided.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Draft concluding observations concerning reports of States parties

Tenth periodic report of Algeria (CERD/C/209/Add.4) (continued)**

40. Mr. DIACONU read out the draft concluding observations:

> "1. The Committee has taken note with interest of the legislative and institutional changes which have taken place in Algeria in recent years and which are appropriate for establishing the necessary framework for respect for human rights in general and for preventing and combating racial discrimination.
>
> 2. The Committee welcomes the spirit of openness and cooperation that characterizes both the report and the dialogue with the representative of the Government.
>
> 3. Since the report focuses primarily on legislation, the Committee considers that the next report should contain more demographic and statistical data on social indicators, reflecting in particular the situation of the ethnic communities, and on judicial and administrative decisions taken to give effect to the Convention. It also considers that further clarifications should be provided on the effects of the emergency measures taken by the Government on the implementation of the Convention.

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* The final version of the draft general recommendation will appear in the Committee's report on the work of its forty-second session.

** Resumed from the 963rd meeting.

> 4. Above all, the Committee believes that the next report should clarify the situation of the population of Berber origin, i.e. its position in Algerian society with regard to its identity, language, culture and participation in public life."

41. Mr. WOLFRUM said that the draft concluding observations should be fleshed out. They seemed to be lacking in substance, especially by comparison with the conclusions formulated by the Human Rights Committee after its consideration of the report of Algeria.

42. Ms. SADIQ ALI noted that the issue of Black Algerians had been mentioned during the discussion and should therefore be included in the draft concluding observations.

43. Mr. FERRERO COSTA said that several members of the Committee were having to give their opinion on draft concluding observation on a report whose discussion they had not been able to take part in because they had been notified only 10 days in advance that the Committee would be holding a session in March. He would therefore like Mr. Wolfrum to state exactly what substantive differences there were between the Committee's concluding observations and those of the Human Rights Committee.

44. Mr. YUTZIS said he shared Mr. Ferrero Costa's views and proposed that a small working group should be requested to flesh out the draft concluding observations to make them reflect the situation in Algeria more accurately.

45. Mr. LAMPTEY said that he was surprised that the Committee's concluding observations were being compared with those of the Human Rights Committee in that the latter had considered a completely different report from the one currently under review. He endorsed Ms. Sadiq Ali's proposal that the question of Black Algerians should be mentioned in the concluding observations.

46. Mr. GARVALOV said he believed that the Committee should make an effort to harmonize the wording it used in its draft concluding observations. In the fourth line of paragraph 3, the term "ethnic minorities" should be used rather than the term "ethnic communities". An important question of principle was involved. The Committee should choose its terms according to its own criteria and not necessarily repeat the ones used by the States parties, which were not always neutral expressions.

47. Mr. BANTON said that he endorsed the draft concluding observations prepared by Mr. Diaconu. In his own view, the situation of Black Algerians was satisfactorily covered by the phrase on the situation of the ethnic communities in the fourth line of paragraph 3. The group whose situation might be a source of concern was the Berbers and that point was dealt with adequately in paragraph 4.

48. He believed that the draft concluding observations faithfully reflected the Committee's discussion of Algeria. If the Committee adopted the recommendation made by the country rapporteurs after their meeting on 11 March (document without a symbol, in English), to the effect that the

Centre for Human Rights should assign a member of its staff to draft the Committee's concluding observations, by August 1993 the Committee might be receiving draft conclusions of a quality comparable to those being considered by the other international treaty monitoring bodies.

49. Mr. DIACONU said that he had used the term "ethnic communities" - which was not taken from the report of Algeria - because it was widely accepted. He proposed that it should be replaced by the term "ethnic groups", which was used both in the Convention and in the report of Algeria. He did not think that there was any particular problem with Blacks in Algeria, but was prepared to mention them in the concluding observations if other members of the Committee wished him to do so. However, he did believe that the Committee should ask Algeria to provide additional information on the Berbers in its next report.

50. If the Committee decided to delete the references to the "spirit of openness and cooperation" and "dialogue" in paragraph 2 of the draft, it would have to do the same in its concluding observations on other countries.

51. Mr. WOLFRUM said that, although he had mentioned the conclusions of the Human Rights Committee, he had never meant to say that the Committee on the Elimination of Racial Discrimination should take them as a model.

52. As to Black people in Algeria, he noted that, when the representative of Algeria had been questioned on the subject of the Black minority, he had simply replied that it was a very small minority. The Committee could not accept such a reply. It could therefore request additional information concerning Black Algerians without overstepping its mandate.

53. Lastly, wording similar to that appearing in paragraph 2 was customarily used when a country resumed relations with the Committee after a break of several years, but that was not the case of Algeria.

54. Mr. LAMPTEY said that the question raised by Mr. Garvalov concerning the wording the Committee used in its concluding observations called for a response. In his view, the Committee did not have to limit itself to a single formula. It was perfectly free to repeat an expression used by the State party - such as national minorities or ethnic groups - as long as it referred to a situation covered in article 1, paragraph 1, of the Convention. Blacks were not an ethnic group, but a minority. If the Committee wished to mention them in its concluding observations, it should therefore mention the "Black minority" in paragraph 3, in addition to the "ethnic communities" - or "ethnic groups", if that term was chosen.

55. Ms. SADIQ ALI said that she agreed with Mr. Lamptey's views on the Black minority. It was important to mention it in the concluding observations.

56. Mr. de GOUTTES said that he also believed the Committee should mention the Black minority in its concluding observations. He agreed with Mr. Diaconu that, in the fourth line of paragraph 3, it was better to speak of "ethnic groups", which was more in line with to the terminology used in the

Convention. In paragraph 2, the Committee might state its concern. He proposed the following wording for that paragraph: "The Committee welcomes the spirit of cooperation that characterizes both the report and the dialogue with the representative of the Government, while expressing its concern about the difficulties of the present situation in Algeria".

57. Mr. SONG Shuhua, replying to the question raised by Mr. Garvalov, said he agreed that it was not necessary to choose one particular formula. In its concluding observations, the Committee could repeat the terminology used by the State party.

58. Mr. GARVALOV said that there were two different possibilities. If the State party acknowledged the existence in its territory of ethnic groups, ethnic minorities, national minorities, etc., it would indeed be appropriate for the Committee to use the same terminology as the State party in its concluding observations. The second possibility nevertheless required some thought: if a State party did not acknowledge the existence of such groups or minorities, whereas everyone knew that they did exist - and that was not an academic theory, the case having arisen in the past with regard to his own country, Bulgaria - what should the Committee do? Should it agree with the State party's opinion? If not, what terminology should it use? That was an important question of principle, which the members of the Committee should think about in order to develop a common position.

59. Mr. LAMPTEY said that he understood Mr. Garvalov's point of view, but did not see what the problem was. In the second case, it would be enough for the Committee to include some of the questions raised by the members during the discussion of the country's report in its concluding observations, using the same wording as the members of the Committee.

60. Mr. YUTZIS said that a completely new phenomenon was beginning to appear: the link between religious conceptions and values, on the one hand, and linguistic, ethnic and cultural elements, on the other. It was therefore disturbing to note that Algerian legislation now contained provisions that seemed to legitimize a certain religious fundamentalism. Article 5 of the Act relating to political associations, mentioned in paragraph 74 of the report (CERD/C/209/Add.4), referred to "behaviour contrary to Islamic morals", and that was consistent with pressures for acceptance of a single religion as the basic standard of a society. He drew the attention of the Committee to that risk. Two years hence, the Committee must have no reason to regret not having foreseen such developments, if they came to pass. The entire question of prevention was at issue.

61. On another matter, paragraph 4 of the draft concluding observations did not appear to take sufficient account of the actual situation and he proposed that it should be replaced by the following text: "The Committee expresses its concern at the situation of the Berber population and believes that the next report should clarify the situation of the population of Berber origin, i.e. its position in Algerian society with regard to its identity, language, culture, participation in public life and the social benefits provided for in article 5 of the Convention".

62. Mr. SHAHI said he agreed with Mr. Garvalov that the Committee should harmonize its concluding observations: if it expressed opinions on the question of ethnicity in connection with the Algerian report, it would also have to do so in all similar cases it discussed. In any event, that question would be a source of difficulties for the Committee.

63. With regard to the draft concluding observations, he would prefer paragraph 3 to speak of ethnic groups rather than minorities, first of all, because the Convention spoke of "groups" and secondly, because the term "minorities" often had a political connotation.

64. As to the Islamic moral values referred to by Mr. Yutzis, he noted that the representative of the Algerian Government who had taken part in the Committee's work had been representing a secular Government, opposed to the Islamic fundamentalists, and had given the term "modern Islamic moral values" an entirely secular interpretation corresponding to the conceptions of that secular Government. The "moral values" referred to by the representative should not be identified with the "moral values" that a fundamentalist Government would impose if it came to power in Algeria.

65. It was obvious that, in many Muslim countries, the struggle was between the secularists and the fundamentalists. Unfortunately, in such countries, the term "secular" was associated with the term "atheist" and that misunderstanding immediately caused a hostile reaction on the part of the population to anything that was secular. In addition, the Governments of such countries were subjected to intense pressure from extremist religious groups and it was not impossible that the fundamentalists would one day come to power through the democratic system - by winning elections by universal suffrage - so that their opponents would have no other solution than to end the democratic system. That situation created countless difficulties and contradictions. He would therefore be in favour of a rather cautious approach that also remained faithful to the provisions of international instruments.

66. He would also like the concluding observations to contain only paragraphs 1, 2 and 3. However, if the other members of the Committee insisted that paragraph 4 should be included, he would not oppose it.

67. Mr. LAMPTEY said that he did not really understand Mr. Yutzis' point of view. He agreed with Mr. Shahi that the Algerian Government was secular and that, if there was a problem in Algeria, it was the result of the fact that the Government was determined to eliminate the Islamic fundamentalists. He also thought that, if there was a Berber minority in Algeria, the problems affecting it were not serious enough to warrant going beyond what Mr. Diaconu was proposing in paragraph 4 of his draft concluding observations.

68. Mr. DIACONU said he regretted that the Committee had become involved in a philosophical debate. If it wished to clear up the problem of the relationship between Islam and the Convention, it should devote a discussion to it, with Mr. Aboul-Nasr present, and draw the appropriate conclusions. It was not right to debate that issue in connection with Algeria and not with other countries that had a majority of Muslims in their population.

69. He agreed with Mr. de Gouttes' proposal on paragraph 2. In paragraph 3, the words "the situation of ethnic communities" in the fourth line might be replaced by the words "the situation of ethnic and racial groups, including the Blacks".

70. With regard to paragraph 4, he could not accept the first part of Mr. Yutzis' proposal expressing the Committee's concern and hoped that Mr. Yutzis would agree to drop it, but the second part, referring to the social benefits provided for in article 5 of the Convention, was acceptable. He hoped that Mr. Yutzis would agree to that compromise text.

71. Mr. YUTZIS said that he disagreed with Mr. Diaconu. A "philosophical debate" was essential, for most of mankind's problems related to concepts and values and such a discussion was crucial.

72. Contrary to what Mr. Lamptey seemed to think, he himself had not linked the Berber issue to the issue of Islam, for they were two different things. The Berber problem was that of a minority whose living conditions were not reflected in the report. For lack of information on that point, the Committee should let the State party know about its concern for that vulnerable group, which was perhaps one of the most vulnerable in Algeria. As to Islam, the Committee should express its concern not only because of the current situation in Algeria, but also with a view to prevention, so as not to have to blame itself later for having done nothing while there had still been time. It could not be denied that the very serious mixture of ethnic and national interests, on the one hand, and religious values, on the other, gave rise to many of the conflicts in modern-day society. Therefore since the report of Algeria mentioned the fact that behaviour contrary to Islam was prohibited, the Committee had a duty to react.

The meeting rose at 1.05 p.m.

CERD/C/SR.983
25 March 1993

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 983rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 18 March 1993, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (concluded)

Draft concluding observations concerning reports of States parties (concluded)

Tenth periodic report of Algeria (CERD/C/209/Add.4) (concluded)

1. Mr. DIACONU proposed that the following words should be added at the end of paragraph 2: "while expressing its concern about the difficulties of the present situation in Algeria". In paragraph 3, the words "ethnic communities" should be replaced by the words "ethnic and racial groups, including blacks". The following words should be added at the end of paragraph 4: "and the social benefits provided for in article 5 of the Convention".

2. Mr. de GOUTTES proposed that, in paragraph 3, the words "including blacks" should be amended to read: "in particular Berbers and blacks".

3. The CHAIRMAN said that he took it that the Committee adopted the amendments proposed by Mr. Diaconu and Mr. de Gouttes.

4. It was so decided.

5. The draft concluding observations concerning the tenth periodic report of Algeria, as amended, were adopted.

Seventh periodic report of the Central African Republic (CERD/C/117/Add.5) (concluded)*

6. Ms. SADIQ ALI submitted the following draft concluding observations concerning the Central African Republic:

> "1. In concluding the review, the Committee regretted that the Central African Republic had not submitted a report since 1984 and had not responded to its invitations to participate in the meeting and to furnish relevant information. The Committee wished to draw the attention of the Government of the State party to the possibility of requesting technical assistance from the United Nations Centre for Human Rights in the preparation of its reports.
>
> "2. It hoped to receive a new report shortly together with a core document in accordance with the guidelines HRI/1991/1. This is the more important in view of the changes which have taken place since 1984."

7. The draft concluding observations concerning the seventh periodic report of the Central African Republic were adopted.

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* Resumed from the 972nd meeting.

Eleventh and twelfth periodic reports of Ecuador (CERD/C/197/Add.9, CERD/C/226/Add.1) (concluded)*

8. Mr. WOLFRUM read out the following draft concluding observations concerning Ecuador:

> "1. The Committee commended the regularity with which the Government of Ecuador had reported on the implementation of the Convention in Ecuador.
>
> "2. The Committee noted that one of the objectives of the National Development Plan was to ensure the recognition of Ecuador's multi-ethnic and multi-cultural character. The Committee expects that indigenous communities will benefit from the implementation of the Plan as far as their economic, cultural and social status is concerned.
>
> "3. The Committee encouraged the Government in its next report to provide detailed information on the implementation of the National Development Plan so as to put the Committee into a position in which it could fully assess the conditions in which the indigenous communities live. The Committee expressed particular concern that economic exploitation of the Amazon region should be undertaken only after full consideration of the interests of indigenous communities in the preservation of their identity. The Committee trusts that the Government will take effective steps to achieve this.
>
> "4. The Government of Ecuador was called upon to report on the functioning of the judiciary in connection with the Convention and especially upon the status and functions of the ad hoc Commission on Human Rights established by the Ecuadorian National Congress."

9. The draft concluding observations concerning the eleventh and twelfth periodic reports of Ecuador were adopted.

Eighth periodic report of Qatar (CERD/C/207/Add.1) (continued)**

10. Ms. SADIQ ALI submitted the following draft concluding observations concerning Qatar:

> "1. The Committee welcomed the Government's willingness in principle to introduce new legislation to bring its existing laws into conformity with the Convention. It repeated its offer of assistance from the advisory services of the Centre for Human Rights.

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* Resumed from the 972nd meeting.

** Resumed from the 964th meeting.

> "2. The Committee drew the attention of the Government to general recommendations I and II, and reiterated its request for further demographic data in accordance with general recommendation IV.
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> "3. While appreciating that there might be little or no evidence of racial discrimination in Qatar, the Committee emphasized the preventive value of legislative measures.
>
> "4. The Committee noted the view of the Government that the Shariah courts and the civil courts together offered sufficient remedies for any charges of racial discrimination that might be brought. It sought clarification as to the criteria by which a Shariah court would determine an appropriate punishment and queried the necessity of separate proceedings in the civil court for the victim to obtain compensation in accordance with article 6 of the Convention."

11. Mr. FERRERO COSTA suggested that paragraph 3 should be amended to reflect the Committee's view that racial discrimination existed in all countries.

12. Mr. YUTZIS said he supported that suggestion and proposed that paragraph 3 should also reflect the State party's claim that racial discrimination did not exist. As to the second sentence of paragraph 4, the Committee had not sought clarification of the criteria by which a Shariah court would determine an appropriate punishment, but had expressed its concern about such criteria being used to apply the law.

13. Mr. BANTON said that, in paragraph 3, it would be enough to delete the words "or no". The one piece of evidence the Committee had found had been the rules which related to the employment of an Arab legal counsel and which some members had considered discriminatory.

14. Mr. WOLFRUM said that a further piece of evidence had been found in the Nationality Law, under which a naturalized citizen had to wait 10 years before being considered for employment in public service.

15. The CHAIRMAN suggested that Ms. Sadiq Ali should submit a revised text at a later stage, in the light of the comments made.

16. It was so decided.

Eighth periodic report of the Sudan (CERD/C/222/Add.1) (concluded)*

17. Mr. BANTON read out the following draft concluding observations concerning the Sudan:

> "1. The Committee expressed its appreciation of the willingness of the Government of the Sudan to continue its dialogue with the Committee. It noted the statement of the representative that violations of human rights

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* Resumed from the 971st meeting.

have been occurring and, in view of the Committee's anxieties, attached particular significance to the further statement that the Government was taking every step to prevent more such occurrences.

"2. The Committee regretted the lack of information on the ethnic dimension to the current conflict in the country and the insufficiency of demographic data requested in the Committee's guidelines and general recommendation IV.

"3. The Committee took note of the information supplied about Sudanese legislation, but observed that there often appears to be a disjunction between these provisions and the manner of their implementation. It expressed its concern about the situation in the Nuba mountains and that of the Fur and its wish to learn about the findings of the Commission of Inquiry appointed on 25 November 1992.

"4. In accordance with article 9, paragraph 1, of the Convention, the Committee requested further information by 31 January 1994 from the Government of the Sudan concerning the implementation of the Convention."

18. Mr. FERRERO COSTA suggested that the following new sentence should be added between the first and second sentences of paragraph 1: "The Committee expressed its deep concern at the serious human rights violations in the Sudan".

19. He also suggested that the following sentence should be added at the end of paragraph 2: "The Committee called upon the Government to comply with the International Convention on the Elimination of All Forms of Racial Discrimination".

20. Lastly, he suggested that the date in paragraph 4 should be changed to 31 July 1993, as the Sudan represented an extreme case of human rights violations and there was no reason why the Committee should wait until January 1994 for further information.

21. Mr. DIACONU said that the proposed new wording for paragraph 2 gave the impression that the Committee was making a judgement, and that might jeopardize the dialogue with the Government of the Sudan. The date in paragraph 4 should be left as it stood in order to allow more time for improvements in the situation.

22. Mr. FERRERO COSTA said that he would not object if the amendment he had proposed to paragraph 2 was worded more tactfully, but he would insist on an earlier deadline, especially as the Committee did not know whether it would be able to meet in January 1994.

23. Mr. YUTZIS asked why the date of 31 January 1994 had been chosen.

24. The Committee had suggested that the representative of the Sudan might inform the authorities of his country that the advisory services of the Centre for Human Rights were available for assistance in the preparation of their next report. That position should be reflected in paragraph 4.

25. Mr. SHAHI said that he agreed with Mr. Diaconu's position on the date of 31 January 1994, but would not object if it was changed to 31 July 1993.

26. With regard to paragraph 2, he proposed that the sentence suggested by Mr. Ferrero Costa should be replaced by the following: "The Committee requests the Government to ensure the harmonization of the Sudan's national legislation, regulations and practices with the provisions of the Convention and their effective implementation".

27. Mr. de GOUTTES said that he supported Mr. Shahi's proposal concerning paragraph 2. As far as paragraph 4 was concerned, he could accept the date of 31 July 1993, but he was aware that it might give rise to problems. The words "by 31 January 1994 at the latest" might therefore be adopted as a compromise solution. He agreed with the proposal made by Mr. Yutzis with regard to paragraph 4.

28. Mr. BANTON said that he agreed with the amendment to paragraph 2 suggested by Mr. Shahi and proposed that the wording Mr. de Gouttes had suggested for paragraph 4 should be amended to read: "as soon as possible, but not later than 31 January 1994". He also supported the proposal by Mr. Yutzis regarding the offer of the assistance of the advisory services of the Centre for Human Rights in the preparation of the Sudan's next report.

29. The draft concluding observations concerning the eighth periodic report of the Sudan, as amended, were adopted.

Eleventh and twelfth periodic reports of Ukraine (CERD/C/197/Add.5 and CERD/C/226/Add.3) (concluded)*

30. Mr. RECHETOV read out the original version of the draft concluding observations concerning Ukraine:

> "1. The Committee commended the regularity with which the Government of the Ukraine had reported on the implementation of the Convention, for the high quality of its delegation's replies to questions, and for its candour in acknowledging deficiencies.
>
> "2. The Committee noted a broad range of information provided in the twelfth report on historic changes going on in Ukraine, its support on the foreign scene, for the protection of human rights and, especially national minorities, and its adoption of legal instruments for developing democracy and strengthening the rule of law. Some of the information provided went beyond the needs of the Committee. It was also felt that demographic data could be presented in a more illustrative way. Special attention was given to the statement in the report pointing out that so far Ukraine has avoided ethnic conflicts, but, given the political,

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* Resumed from the 959th meeting.

economic and social conditions, there can be no guarantee that the ethnic situation will not deteriorate. Hope was expressed that the situation in Crimea would be resolved with respect for human rights and for the rights of ethnic minorities together with recognition of the inviolability and integrity of existing frontiers.

"3. Regarding article 3 of the Convention, the Committee considered that Ukraine's stand on sanctions in regard to South Africa should have been expressed. More information was demanded on article 4 in accordance with general recommendation IV. It was also considered that information offered concerning article 7, on measures in the fields of teaching and education, should have been in accordance with general recommendation V."

He then read out the revised version of the same text:

"1. The Committee commended the regularity with which the Government of the Ukraine had reported on the implementation of the Convention, for the high quality of its delegation's replies to questions, and for its candour in acknowledging deficiencies.

2. The Committee noted a broad range of information provided in the twelfth report on historic changes going on in Ukraine, its support on the foreign scene, for the protection of human rights and, especially national minorities, and its adoption of legal instruments for developing democracy and strengthening the rule of law. It was nevertheless felt that demographic data could be presented in a more illustrative way. Hope was expressed that the existing situation of unrest there will be resolved with respect for human rights and for the rights of ethnic minorities together with recognition of the inviolability and integrity of existing frontiers.

3. Regarding article 3 of the Convention, the Committee considered that Ukraine's stand on sanctions in regard to South Africa should have been expressed. More information was demanded on article 4 in accordance with general recommendation IV. It was also considered that information offered concerning article 7, on measures in the fields of teaching and education, should have been in accordance with general recommendation V."

31. Mr. FERRERO COSTA said that the revised text was generally satisfactory. He was not altogether clear as to the meaning of the words "together with recognition of the inviolability and integrity of existing frontiers" at the end of paragraph 2. As the Committee normally did not refer to such issues in its concluding observations, those words should be deleted.

32. Mr. SHAHI said that the revised text was acceptable. However, he was not sure whether it had been appropriate to replace the words "situation in Crimea" in the last sentence of paragraph 2 by the words "existing situation of unrest". In drafting its concluding observations, the Committee should follow a uniform practice in referring to specific regions.

33. Mr. de GOUTTES said that the fact that the consideration of Ukraine's report had been particularly rich should be reflected in the Committee's concluding observations. In his view, the fourth sentence of paragraph 2 of the original version of the text should not have been deleted because it reflected one of the most important concluding remarks made by the representative of Ukraine. That sentence should either have been retained as it stood or amended to read: "The Committee's attention was drawn in particular to the statement that a solution to ethnic conflicts lay in an improvement in the economic situation and in political stabilization".

34. Mr. RECHETOV said he agreed with Mr. de Gouttes that the fourth sentence of paragraph 2 of the original text was very important and should be retained. He also took note of Mr. Shahi's comments on the replacement of the words "situation in Crimea" by the words "existing situations of unrest" and recalled that, during the consideration of Ukraine's report, specific reference had been made to unrest in Crimea and in another region, which was not part of Ukraine. It had thus been decided not to refer to that latter region in the concluding observations. If the Committee wished, he could agree that, in paragraph 2, the words "recognition of the inviolability and integrity of existing frontiers" should be deleted, even though such recognition was of vital importance to the situation in Crimea.

35. Mr. GARVALOV said that he was in favour of retaining what had been the fourth sentence of paragraph 2 in the original version. In the first sentence of paragraph 3, the word "expressed" should be replaced by the word "clarified". In the second sentence of that paragraph, the word "demanded" should be replaced by the word "asked".

36. Mr. DIACONU said that the question of the inviolability and integrity of existing frontiers was closely linked to ensuring respect for the rights of ethnic minorities and was consequently of great importance to the countries of eastern Europe. He proposed that, in the last sentence of paragraph 2, the words "together with recognition of the inviolability and integrity of existing frontiers" should be replaced by the words "together with respect for the inviolability of frontiers and the territorial integrity of States".

37. Mr. LAMPTEY said that, on the whole, the draft text was acceptable. He proposed that, in the third sentence of paragraph 2 of the revised text, the words "situation in Crimea" should be replaced by the words "situation in the area". In the last sentence of the paragraph, the words "together with recognition of the inviolability and integrity of existing frontiers" should be deleted, since the issue was a political one that went beyond the scope of the Committee's mandate.

38. The draft concluding observations concerning the eleventh and twelfth periodic reports of Ukraine, as amended, were adopted.

Eighth periodic report of Qatar (CERD/C/207/Add.1) (concluded)

39. Ms. SADIQ ALI, noting that paragraphs 3 and 4 had been amended, read out the revised text of the draft concluding observations concerning Qatar:

> "1. The Committee welcomed the Government's willingness in principle to introduce new legislation to bring its existing laws into conformity with the Convention. It repeated its offer of assistance from the Advisory Services of the Centre for Human Rights.
>
> "2. The Committee drew the attention of the Government to general recommendations I and II, and reiterated its request for further demographic data in accordance with general recommendation IV.
>
> "3. While appreciating that there might be little evidence of racial discrimination in Qatar, the Committee emphasized the preventive value of legislative measures.
>
> "4. The Committee noted the view of the Government that the Shariah courts and the civil courts together offered sufficient remedies for any charges of racial discrimination that might be brought. The Committee was concerned about the criteria by which a Shariah court would determine an appropriate punishment and queried the necessity of separate proceedings in the civil court for the victim to obtain compensation in accordance with article 6 of the Convention."

40. Mr. SHAHI said that, during its consideration of the report of Qatar, the Committee had requested further information about the dual system of Shariah courts and civil courts. The words "was concerned about" in the second sentence of paragraph 4 were thus too strong.

41. Mr. BANTON suggested that the original wording of that sentence should be used. The words "The Committee was concerned about" would be replaced by the words "It sought clarification as to".

42. The draft concluding observations concerning the eighth periodic report of Qatar, as amended, were adopted.

Fifth, sixth and seventh periodic reports of Jamaica (CERD/C/117/Add.4) (concluded)*

43. Ms. SADIQ ALI read out the following revised text of the draft concluding observations concerning Jamaica:

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* Resumed from the 979th meeting.

> "1. In concluding the review, the Committee regretted that Jamaica had submitted no report since 1985. It expressed appreciation for the attendance of the representative of the State and the explanation he had offered for the lapse in reporting.
>
> "2. The Committee hoped to receive the next report in due time, together with a core document, and that it would be in accordance with the guidelines. In particular it hoped that by that time Jamaica would be in a position to withdraw its reservation regarding article 4.
>
> "3. As the demographic information supplied with the previous report was in some respects problematic, Jamaica was requested to clarify the demographic aspects in its next report. It was also asked to supply more information relating to article 5 of the Convention."

44. The draft concluding observations concerning the fifth, sixth and seventh periodic reports of Jamaica, as amended, were adopted.

Fourth periodic report of Chad (CERD/C/114/Add.2) (concluded)*

45. Mr. de GOUTTES read out the following draft concluding observations concerning Chad:

> "1. The Committee welcomed the presence of the Minister of Humanitarian Affairs of Chad, who had come to present his Government's point of view, thus demonstrating Chad's willingness to reopen the dialogue with the Committee after many years of silence.
>
> "2. The Committee took note with satisfaction of the commitment made by the representative of Chad to submit the written periodic report in the prescribed manner at the next session and reiterated its offer of the advisory services of the Centre for Human Rights to assist Chad in preparing the report, if it so wished.
>
> "3. The Committee emphasized the particular importance it attached, during the country's present transition period, to the measures taken by the Government of Chad to consolidate the rule of law and to prevent the return of any dictatorial regime or of any policies of discrimination or repression against particular ethnic groups."

46. The draft concluding observations concerning the fourth periodic report of Chad were adopted.

Initial report of Mozambique (CERD/C/111/Add.1) (concluded)*

47. Ms. SADIQ ALI submitted the following draft concluding observations:

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* Resumed from the 980th meeting.

> "1. In concluding the review, the Committee regretted that Mozambique had not been able to respond to its invitation to participate in the meeting and to furnish relevant information. The Committee wished to draw the attention of the State party to the possibility of requesting technical assistance from the United Nations Centre for Human Rights in the preparation of its report. The Committee hoped to receive a new report shortly.
>
> "2. At the same time, the Committee expressed its awareness of the current difficulties in the State party which it hoped might soon be overcome."

48. Mr. FERRERO COSTA said that, as in the case of other concluding observations, mention should be made of the fact that Mozambique had failed to submit a report since 1984. He proposed that, in paragraph 1, the words "had not submitted a report since its initial report in 1984 and" should be inserted after the words "the Committee regretted that Mozambique". In his view, the wording of paragraph 2 was not forceful enough; he therefore proposed that the words "its deep concern at the serious human rights violations in Mozambique" should be added after the words "the Committee expressed". He would also like the following wording, which was similar to that included in the concluding observations concerning the Sudan, to be added at the end of paragraph 2: "It requested the Government to ensure the harmonization of Mozambique's national legislation, regulations and practices with the provisions of the Convention and their effective implementation".

49. Mr. DIACONU said that the cases of the Sudan and Mozambique were different. The Committee knew for certain that ethnic problems existed in the Sudan. In Mozambique, however, it was not clear that there actually was an ethnic or racial problem. He had no objection to the proposal that a reference should be added to the Committee's concern about the serious human rights violations in Mozambique; nevertheless, the Committee was not bound to make such a general statement, which was really the province of other human rights bodies.

50. In considering the report of the Sudan, the Committee had been able to determine and to make the observation that there was a need for that country to ensure that its policies were harmonized with the provisions of the Convention. Since Mozambique had not been present during the consideration of its report, the Committee could not be sure that the Government did need to harmonize its policies in that manner.

51. Mr. FERRERO COSTA said that he was willing to withdraw his proposal for the addition of the words "It requested the Government to ensure the harmonization of Mozambique's national legislation, regulations and practices with the provisions of the Convention and their effective implementation". Instead, he proposed that the first sentence of paragraph 1 should be redrafted to read: "In concluding the review, the Committee regretted that Mozambique had not submitted a report since its initial report in 1984 and had not been able to respond to its invitation to participate in the meeting and to furnish relevant information with regard to the application of the Convention".

52. The draft concluding observations concerning the initial report of Mozambique, as amended, were adopted.

Twelfth periodic report of Poland (CERD/C/226/Add.2) (concluded)

53. Mr. WOLFRUM submitted the draft concluding observations concerning Poland:

> "1. The Committee recommended that the Government of the Republic of Poland in drafting its next periodic report makes use of the possibility opened up by the revised guidelines on reporting to submit a core document covering the legal, political and economic situation in Poland in general. It trusts that the next periodic report will provide all the information requested during the Committee's consideration of the tenth, eleventh and twelfth reports.
>
> "2. The Committee reiterated its request for further demographic data in accordance with general recommendation IV.
>
> "3. The Committee considered the form in which the Convention had been incorporated into Polish law and noted that a different system has been provided for under the new Constitution. It recommended to the Government to consider giving the Convention the same status in domestic law as other international human rights instruments."

54. Mr. de GOUTTES suggested that the following words should be added at the end of paragraph 2: "and for full information on the situation of ethnic groups".

55. Mr. FERRERO COSTA suggested that the full title of the Convention should be given in the first sentence of paragraph 3.

56. The draft concluding observations concerning the twelfth periodic report of Poland, as amended, were adopted.

ORGANIZATION OF WORK (concluded)*

57. Mr. BANTON said that the country rapporteurs had met to discuss ways of improving the Committee's concluding observations and had prepared the following statement:

> "The country rapporteurs met on 11 March to harmonize their draft concluding observations. They recommended that starting in August 1993 the Committee follow the example of other treaty bodies in requesting that the Centre for Human Rights assign a staff member to draft concluding observations on our behalf. An example of how this is being done is provided by the concluding observations of the Human Rights Committee on Algeria circulated at the time of CERD's consideration of the Algerian report."

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* Resumed from the 961st meeting.

58. The country rapporteurs had considered that the Committee's concluding observations should be more substantial so that they would be in line with those of other treaty bodies. The Committee would still have complete control over their content. He suggested that the arrangement should be tried out at the next session and then reviewed.

59. Mr. DIACONU said that the staff member of the Centre for Human Rights would draft the concluding observations for the Committee's consideration, rather than on its behalf. He was also not sure to whom the country rapporteurs' statement was addressed: was it intended for the Centre for Human Rights? In any event, he thought that the proposal it contained was a very good one.

60. Mr. FERRERO COSTA and Mr. GARVALOV said that they agreed with the proposal.

61. Mr. de GOUTTES, Mr. YUTZIS and Mr. WOLFRUM said that they agreed with the proposal and expressed their appreciation for the hard work the Secretariat had done in helping to prepare the concluding observations.

62. The CHAIRMAN said that the Committee seemed to agree that it should request the Centre for Human Rights to assign an extra staff member to draft concluding observations for its consideration at the Committee's next session. If the Committee agreed, a decision to that effect would be prepared.

63. *It was so decided*.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (*continued*)

Draft general recommendation on the implementation of article 9 of the Convention (CERD/C/1993/Misc.3) (*continued*)*

64. Mr. DIACONU said that the draft recommendation, which had been discussed at the Committee's 981st meeting, was intended to remind States parties that, under article 9 of the Convention, they were obliged to report on the situation in their own territory. The last paragraph provided that, if they wished to refer to the situation in other States parties, they should invoke article 11 of the Convention.

65. Mr. YUTZIS said that the problem of a State party discussing the human rights situation in another State party had arisen very rarely. He considered that the draft recommendation could be made both simpler and more positive in tone and proposed that it might read:

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* Resumed from the 981st meeting.

> "1. Under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties undertake to submit to the Secretary-General of the United Nations, through the Committee, a report on measures taken by them to give effect to the provisions of the Convention.
>
> "2. With regard to this obligation of States parties, the Committee has noted that on some occasions reports have referred to human rights situations in other States.
>
> "3. For this reason, the Committee wishes to remind States parties to bear in mind the existence of article 11 of the Convention, which is, procedurally speaking, the only means available for drawing a matter to the Committee's attention when a State party considers that another State party is not giving effect to the provisions of the Convention."

66. Mr. FERRERO COSTA and Mr. de GOUTTES said that they supported the proposal by Mr. Yutzis.

67. Mr. DIACONU said that, if the Committee wished to adopt Mr. Yutzis' proposal, he had two amendments to suggest. In paragraph 1, it should be made clear that the reports of States parties were submitted to the Committee, through the Secretary-General, rather than the other way around. Secondly, although Mr. Yutzis' proposal placed the main emphasis on article 11 of the Convention, he thought that it should remind States parties of their obligations under article 9. He therefore suggested that paragraph 3 should read: "For this reason, the Committee wishes to remind States parties of the provisions of article 9 concerning the contents of reports, as well as the existence of article 11, which is, procedurally speaking, the only means available ...".

68. Mr. FERRERO COSTA suggested the following wording for paragraph 1: "... to submit to the Secretary-General of the United Nations, for the consideration of the Committee ...". The text of paragraph 3 should read: "... the contents of reports, as well as the provisions of article 11 ...".

69. Mr. WOLFRUM said that, all along, he had wanted to view the issue from the perspective of article 11, rather than article 9, so he welcomed Mr. Yutzis' proposal, with the amendments suggested by Mr. Diaconu. Paragraph 3 might be amended to read: "... the contents of reports, while bearing in mind the provisions of article 11 ...".

70. Mr. RECHETOV said that the draft recommendation tried to combine two entirely different ideas. Mr. Diaconu had wished to discourage States parties from discussing the human rights situation in other States by reminding them of their obligations under article 9 of the Convention. The Committee knew which State party he had had in mind. Because of other members' misgivings, Mr. Diaconu had introduced the reference to article 11, which dealt with an entirely different procedure. Moreover, article 11 covered only the case

where one State party wished to condemn the situation in another State, when the comments made might not be critical at all. Both articles were important, but, in his view, they did not belong together in the same general recommendation.

71. The CHAIRMAN suggested that Mr. Yutzis and Mr. Diaconu might prepare a compromise text which the Committee could adopt at its next meeting.

72. Mr. de GOUTTES said he agreed with Mr. Rechetov that the text contained two different proposals, one on article 9 of the Convention and the other on article 11: however, there was no reason why the two proposals should not be combined. That would not be incompatible with a separate recommendation focusing on article 11.

73. The CHAIRMAN suggested that Mr. Diaconu and Mr. Yutzis should prepare a combined text for adoption the following day. Mr. de Gouttes and Mr. Rechetov might also prepare a text focusing exclusively on article 11.

74. It was so decided.

DRAFT DECISIONS BY THE COMMITTEE

Draft decision on the human rights situation in Burundi, Rwanda and Papua New Guinea

75. Mr. BANTON introduced the draft decision, which read:

> "At its forty-first session, the Committee on the Elimination of Racial Discrimination addressed communications to the Government of Burundi, Rwanda and Papua New Guinea requesting further information (see A/47/18, sect. VII and paras. 265-266). This information was requested by 1 March 1993, but, at the time of writing, has not yet been received.
>
> "The Committee is concerned about information it has received independently about the situation in these countries and believes it must take up the matter again at its next session starting on 2 August 1993. Therefore, the Committee requests the Secretary-General to make available to it any relevant information concerning the human rights situation in these countries."

76. He asked the Secretary of the Committee to explain what effects that decision would have from the administrative point of view.

77. Mr. JOHNSON (Secretary of the Committee) said that the last sentence of the decision was to be understood as requesting the Secretariat of the Centre for Human Rights to inquire about information that might be available on the human rights situation in those countries. Such information could be derived from the documentation of the Commission on Human Rights and also from material that had been submitted to treaty monitoring bodies under other conventions.

78. Mr. LAMPTEY said he did not think that the draft decision was either necessary or proper. The Committee's sole task under the Convention was to consider situations in countries on the basis of reports by States parties.

79. The Committee had already decided that, when countries did not respond to its requests for information, as in the case of Mozambique, its procedure would be to consider previous reports, together with material from other sources. However, taking account of reports submitted to other human rights bodies might lead to problems with the State party. The Committee's proper function was to cooperate with States parties in eliminating racial discrimination.

80. Just as State parties had freely assumed their obligations under the Convention, so were they free to renounce those obligations at any time, and that would hardly help to achieve the Committee's objectives. All the Committee needed to do was to agree to consider the reports of the three Governments concerned at its next session, if they had been received by then. The country rapporteurs could help the Secretariat obtain the necessary documentation.

81. Mr. WOLFRUM said he did not fully understand those objections. Mr. Lamptey had himself agreed that the Committee could, under its own rules of procedure, discuss the situation in the countries concerned on the basis of previous reports and, in so doing, could use not only official material, but material from other sources. All the draft decision was doing was to ensure that there was sufficient information on which to assess those reports.

82. The three countries concerned had not cooperated with the Committee and he did not see why they should receive different treatment than Mozambique and Jamaica.

83. Mr. BANTON said that he would have no objection if the Committee did not adopt the draft decision, provided that it agreed to include the consideration of the last available reports of the three States parties in the agenda for its next session. Those States should be notified of the Committee's intention, using the format normally adopted in cases of non-reporting States, and should be invited to submit reports in the interim and to be present when those reports were considered.

84. Mr. YUTZIS said that the members of the Committee evidently disagreed on how article 9 (2) of the Convention, which stated that recommendations could be based on "information received from the States parties", was to be interpreted. It might be useful to draft a general recommendation on the subject.

85. He himself could support the draft decision in principle.

86. Mr. de GOUTTES pointed out that there were two other draft decisions, to be considered on the former Yugoslavia. The adoption of those two decisions before the end of the session was a matter of urgency, particularly since the Committee had agreed to consider the possibility of preventive measures under article 9 (1).

87. Another matter of priority was the text concerning the case of Mr. Vidas, introduced earlier: that case was significant as an example of discrimination based on ethnic origin.

88. Mr. WOLFRUM supported by Mr. SONG Shuhua, proposed that the Committee should adopt Mr. Banton's suggestion that, instead of adopting the draft decision, it should agree to discuss the last available reports of the three States parties concerned at its next session.

89. It was so decided.

Draft decision on the former Yugoslavia

90. The CHAIRMAN drew attention to the draft decision submitted by Mr. Rechetov, which read:

> "In view of recent reports of armed conflict within the territory of former Yugoslavia and in accordance with rule 65 of its rules of procedure relating to the provisions of article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination requests further information by 31 July 1993 from the Governments of the Federation of the Republic of Yugoslavia (Serbia and Montenegro), Croatia and Slovenia, on the implementation of the Convention within their territories.
>
> "The Committee trusts that the Government of Bosnia-Herzegovina has given attention to the process of notifying its succession to the treaty obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and, if it proceeds accordingly, the Committee requests further information by 31 July from the Government of Bosnia-Herzegovina on the implementation of the Convention within its territory."

91. He then drew attention to the draft decision proposed by Mr. Aboul-Nasr, Mr. Banton, Mr. Garvalov, Mr. van Boven, Mr. Wolfrum and Mr. de Gouttes, which read:

> "In view of recent reports of ethnic conflict within the Federal Republic of Yugoslavia (Serbia and Montenegro) and in accordance with rule 65 of its rules of procedure relating to the provisions of article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination requests further information by 31 July 1993 from the Government on the implementation of the Convention within the territory.

> "The Committee on the Elimination on Racial Discrimination decides that at its forty-third session it will review the eighth and the tenth reports of Yugoslavia submitted and considered in 1985 and 1990 and the Committee's consideration of them to see whether any lessons can be learned about the processes generating ethnic conflicts and about the ways in which the Committee can react to signs of increasing tension."

92. Mr. DIACONU asked whether the sponsors of the two draft decisions could not agree to combine them into a single text.

93. Mr. RECHETOV said he could accept a combined text. He suggested that, in the decision he had proposed, the words "within their territories" at the end of the first paragraph should be deleted.

94. Mr. de GOUTTES said that he could agree that a reference to Croatia and Slovenia should be added to the text of the second draft decision.

95. Mr. RECHETOV pointed out that, since the Committee was requesting information from all successor States to the former Yugoslavia, it was important that the text adopted should include a reference to Bosnia and Herzegovina.

96. Mr. FERRERO COSTA said he agreed that the two texts needed to be brought into line, but he was not sure whether there had in fact been any reports of ethnic conflicts in Slovenia. He feared that to request information from all the Republics that had belonged to the former Yugoslavia without distinction might water down the central issue facing the Committee, which was the ethnic cleansing reported to be taking place in Serbia and Croatia.

97. Mr. WOLFRUM proposed that the beginning of the second draft decision should be amended to read: "In view of recent reports of ethnic conflict within the territory of the former Yugoslavia ...". The end of the paragraph would read: "... requests further information by 31 July 1993 from the Governments of the former Yugoslavia (Serbia and Montenegro), Croatia and Slovenia on the implementation of the Convention within their territories".

98. The text could then continue with the second paragraph of the first draft decision, with the wording brought into line with that of the recommendation already adopted on the subject and with the addition of the words "if possible".

99. Mr. RECHETOV said the he could accept that suggestion.

100. Mr. FERRERO COSTA pointed out that the wording should be brought into line with article 3 of the Convention, which used the phrase "territories under their jurisdiction" rather than "their territories". That distinction was an important one.

101. Mr. WOLFRUM said that he had intended to use that wording.

102. Mr. SHAHI noted that the first part of the proposed text used the words "the former Yugoslavia", but later referred to "the Republic of Yugoslavia"; the texts should be made consistent.

103. In his view, it would be too much in the present circumstances to expect the Government of Bosnia and Herzegovina to be in a position to provide information, but he could accept the text if the words "if possible" were included.

104. The CHAIRMAN suggested that a small working group consisting of Mr. Yutzis, Mr. Rechetov, Mr. Diaconu, Mr. Ferrero Costa, Mr. Wolfrum and Mr. de Gouttes should be set up to prepare a revised text for adoption the following day.

105. He further suggested that Mr. Shahi should be designated to monitor the work of the fourth session of the Preparatory Committee for the World Conference on Human Rights.

106. It was so decided.

The meeting rose at 6.10 p.m.

CERD/C/SR.984
6 August 1993

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-second session

SUMMARY RECORD OF THE 984th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 19 March 1993, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

The meeting was called to order at 10.15 a.m.

DRAFT DECISIONS BY THE COMMITTEE

Draft decision concerning the former Yugoslavia (concluded)

1. Mr. WOLFRUM read out the following revised draft decision concerning the former Yugoslavia, prepared by the working group appointed for that purpose:

> "1. The Committee is gravely concerned about the ongoing ethnic conflict in the territory of the former Yugoslavia.
>
> "2. The Committee requests the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro) and of the Republic of Croatia to send it, as soon as possible and not later than 31 July 1993, further information on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.
>
> "3. The Committee encourages the Republic of Bosnia and Herzegovina to confirm to the Secretary-General, as depositary of the International Convention on the Elimination of All Forms of Racial Discrimination, that it continues to be bound by obligations under the Convention. If it proceeds accordingly, the Committee requests further information, as soon as possible and not later than 31 July 1993, on the implementation of the Convention.
>
> "4. The Committee decides to examine the situation in the territory of the former Yugoslavia, within the framework of its Convention, at its forty-third session to be held in August 1993."

2. Mr. RECHETOV proposed a drafting change in paragraph 4 of the text, where the word "its" should be deleted before the word "Convention" and the full title of the Convention should be reproduced.

3. Mr. SHAHI asked Mr. Wolfrum to confirm that the names of the countries mentioned in the draft decision were correct and in conformity with the designations accepted by the General Assembly. Also, he wondered whether, given the situation currently obtaining in Bosnia and Herzegovina, it was appropriate to request that country to provide the Committee with further information by 31 July 1993.

4. Mr. WOLFRUM confirmed that the names of the various republics in the territory of the former Yugoslavia were those found in the decision on the subject adopted by the Commission on Human Rights, which was correct. The request for information from Bosnia and Herzegovina in paragraph 3 of the draft decision had been very carefully formulated by the working group. The request would give Bosnia and Herzegovina an opportunity to report on the incidents that were taking place in its territory but over which the official Government of Bosnia and Herzegovina had no control. Bosnia and Herzegovina was thus being offered a very interesting possibility.

5. Mr. FERRERO COSTA said that the working group, consisting of Mr. Rechetov, Mr. Wolfrum and himself, had reproduced in the draft decision all the concerns expressed by the Committee. He hoped that it would be adopted by consensus.

6. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to adopt the draft decision.

7. It was so decided.

Draft decision concerning the case of Mr. Vidas

8. Mr. BANTON said that at the request of the Committee he had prepared, in response to a communication from Mr. Vidas, a draft decision reading as follows:

> "Draft decision. Further information requested from the Government of Yugoslavia
>
> "In view of information received from Mr. Kazimir Vidas, who was a member of the Committee on the Elimination of Racial Discrimination from 1988 to 1992 and latterly one of its Vice-Chairmen, and in accordance with rule 65 of its rules of procedure relating to the provisions of article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination requests further information by 1 July 1993 from the Government of Yugoslavia concerning the protection of the civil rights of Mr. Kazimir Vidas during that period of 1992 in which he was resident in Belgrade.
>
> "The Committee has been informed that in March 1992, during Mr. Vidas' absence from Belgrade, his apartment was illegally occupied and that a menacing press campaign was organized against him. If this is true, and whoever may be responsible, these actions could constitute discrimination based upon national or ethnic origin contrary to article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination."

9. He had prepared the draft decision on the basis of article 9, paragraph 1, but he was not sure that that provision afforded a sound legal basis, since it stipulated that the Committee might request further information from the States parties following a report. In the present case that was not so. A more correct procedure would be for the Chairman to send a letter either to the Yugoslav Mission to the United Nations office at Geneva or to another Yugoslav authority.

10. Mr. DIACONU considered that the second procedure suggested by Mr. Banton would be far more appropriate. The Chairman of the Committee could write to the Ministry of Foreign Affairs of the Federal Republic of Yugoslavia to request information from it. At its August session, the Committee could consider that country's report. Subsequently, it could ask it to supply further information.

11. Mr. RECHETOV favoured the procedure proposed by Mr. Diaconu. Moreover, he had difficulty with the term "a menacing press campaign". The Committee knew nothing about such a campaign; in particular, it did not know whether it had included elements connected with Mr. Vidas' origins, which would make it a case of discrimination.

12. Mr. de GOUTTES endorsed the proposal made by Mr. Diaconu. It seemed important to him that the Committee should react with sufficient vigour. Every time a member of a United Nations human rights body had been attacked, the body concerned had reacted; the Committee could not fail to do the same. He agreed that the procedure adopted should take the form of a letter from the Chairman rather than a decision of the Committee. He understood Mr. Rechetov's objection and considered that a formula such as "According to information brought to the Committee's notice" must be found, while maintaining a reference to the two developments. Moreover, the Committee might consider giving a certain amount of publicity to the letter by bringing it to the notice of the media within a reasonable period of time.

13. Mr. GARVALOV agreed with previous speakers that the solution to be adopted should take the form of a letter addressed by the Chairman to the Yugoslav Minister for Foreign Affairs. Nevertheless, the letter must have the support of the Committee, which would therefore have to adopt a decision instructing the Chairman to send it.

14. Mr. FERRERO COSTA said that he, too, was in favour of sending a letter, which must be given extensive publicity in the media, as Mr. de Gouttes had proposed. However, as Mr. Garvalov had pointed out, a letter from the Chairman was not sufficient: there must also be a decision by the Committee.

15. Mr. LECHUGA HEVIA agreed with Mr. Garvalov that the letter from the Chairman must reflect a decision by the Committee. As far as its content was concerned, it could reproduce the complaints made by Mr. Vidas and express the Committee's concern. It would be advisable, as Mr. de Gouttes had proposed, to give the letter the greatest possible publicity.

16. Mr. SONG said that he, too, favoured the idea of a letter from the Chairman of the Committee to the Yugoslav Minister for Foreign Affairs. A copy of the letter from Mr. Vidas could be annexed to it. The Committee could also consider writing to Mr. Vidas to inform him of the action taken further to his letter.

17. Mr. RECHETOV noted that all members of the Committee seemed to agree that the Chairman, on the instructions of the Committee, should send a letter to the Yugoslav Minister for Foreign Affairs. The Chairman could also, again on instructions from the Committee, write to Mr. Vidas and inform him of the measures taken by the Committee following receipt of his letter.

18. In the past, the Committee had taken a decision concerning the independence of its members. The question of protecting their rights was just as important and might arise again in the future.

19. Ms. SADIQ ALI endorsed Mr. Rechetov's statement.

20. Mr. de GOUTTES said that, in his letter to the Yugoslav Minister for Foreign Affairs, the Chairman could take up the contents of the draft decision which had served as a starting point for the discussion, using a formula such as "According to information brought to the Committee's notice" to introduce the account of the acts complained about by Mr. Vidas.

21. Mr. RECHETOV pointed out that the Committee must state, in its decision, that the greatest publicity would be given to the letter.

22. The CHAIRMAN said that, if there was no objection, he would take it that the Committee instructed him to send the Yugoslav Minister for Foreign Affairs a letter taking up the contents of the draft decision under consideration, as well as a letter to Mr. Vidas expressing the Committee's sympathy and informing him of the measures taken by it. The Secretariat would be requested to ensure that the letter was publicized in the media.

23. *It was so decided*.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (*continued*)

Draft general recommendation on the implementation of article 9 of the Convention (*concluded*)

24. Mr. DIACONU introduced a revised draft general recommendation concerning the implementation of article 9 of the Convention, to which he made a few oral drafting changes. The amended text was the following:

> "1. Under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties have undertaken to submit through the Secretary-General of the United Nations, for consideration by the Committee, reports on measures taken by them to give effect to the provisions of the Convention.
>
> "2. With respect to this obligation to the States parties, the Committee on the Elimination of Racial Discrimination has noted that on some occasions reports have made reference to situations existing in other States.
>
> "3. For this reason, the Committee wishes to remind States parties of the provisions of article 9 concerning the contents of their reports, while bearing in mind article 11 of the Convention, which is the only procedural means of drawing the attention of the Committee when a State party considers that another State is not giving effect to the provisions of the Convention".

25. Mr. BANTON proposed a few minor drafting changes to paragraph 3, which would then read: "For this reason, the Committee wishes to remind States parties of the provisions of article 9 concerning the contents of their

reports, while bearing in mind article 11 of the Convention, which is the only procedural means available to States for drawing to the attention of the Committee situations in which they consider that some other State party is not giving effect to the provisions of the Convention."

26. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to adopt the revised draft general recommendation submitted by Mr. Diaconu and Mr. Yutzis, as orally amended.

27. It was so decided.

OTHER BUSINESS (continued)*

Draft letter to the Secretary-General of the United Nations concerning the prevention of racial discrimination, including early warning measures and urgent procedures (no symbol, English only)

28. Mr. SHAHI, co-sponsor of the draft with Mr. Ferrero Costa and Mr. Garvalov, said that the letter had two purposes: to inform the Secretary-General of the follow-up given by the Committee to his recommendations and to decompartmentalize the work of the different treaty bodies, as well as that undertaken by the Secretary-General under the human rights protection programme.

29. Mr. RECHETOV said that he approved of the draft letter. Nevertheless, he proposed that it should include an expression of thanks to the Secretary-General for the decision which had been taken, with his support, concerning the financing and organization of the Committee's current session.

30. Mr. de GOUTTES said that the draft letter would lend a certain impact to the Committee's document on preventive measures. Like Mr. Rechetov, he considered that the financial effort made to enable the Committee to hold its forty-second session must be acknowledged in one way or another. However, it would be better for such an initiative to form the subject of a separate document.

31. Mr. DIACONU supported the idea of sending a letter to the Secretary-General through the Chairman of the Committee. He proposed that in the third paragraph of the draft the words "urgent procedures to respond to problems" be replaced by the words "urgent procedures which the Committee has in view to respond to problems". Furthermore, Mr. Rechetov's proposal should be included in a separate letter to the Secretary-General.

32. Mr. FERRERO COSTA considered that Mr. Rechetov's proposal should form the subject of another document. As far as the amendment proposed by Mr. Diaconu was concerned, he would prefer the wording "urgent procedures which the Committee would adopt to respond to problems".

33. Mr. DIACONU accepted Mr. Ferrero Costa's proposal.

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* Resumed from the 972nd meeting.

34. The CHAIRMAN said that, if there was no objection, the draft letter, as orally amended by Mr. Ferrero Costa*, would be considered to be adopted.

35. It was so decided.

SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 7) (concluded)**

Draft proposal concerning the Third Decade to Combat Racism and Racial Discrimination

36. Mr. BANTON, the author of the draft, said that the text under consideration took account of the amendments which the Committee had proposed to an earlier draft.

37. The CHAIRMAN said it was his understanding that the Committee wished to adopt the revised draft* concerning the Third Decade to Combat Racism and Racial Discrimination.

38. It was so decided.

OTHER BUSINESS (concluded)

Proposal concerning the Committee's practice

39. Mr. BANTON, introducing orally a proposal concerning the Committee's practice, pointed out that other treaty bodies periodically held pre-sessional meetings attended by a member from each regional group in order to draw up a list of the issues to be raised in the presence of the representatives of States parties when they introduced their reports. That practice would in no way prevent other Committee members from participating as they saw fit in the consideration of the report concerned, but it would be advisable for them to advise the pre-sessional meeting in advance of those issues which they were thinking of raising subsequently. Such an arrangement had the advantage of enabling States parties to be better prepared to reply to the questions put to them.

40. He therefore proposed that the Secretariat should prepare, in time for the Committee's next session, a document on the practice followed in that respect by other treaty bodies.

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* The final text of this draft will be reproduced in the Committee's report on the work of its forty-second session.

** Resumed from the 973rd meeting.

41. The CHAIRMAN said that, if there was no objection, he would take it that the Committee approved Mr. Banton's proposal concerning the possibility of the Committee's holding, like other treaty bodies, pre-sessional meetings to draw up in advance lists of issues to be placed before the representatives of States parties.

42. It was so decided.

Proposal concerning reminders to be sent to States parties more than two reports in arrears

43. The CHAIRMAN suggested that the Secretariat should be requested to send out reminders to States parties more than two reports in arrears.

44. It was so decided.

Draft amendment to the guidelines regarding the form and contents of reports submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.2)

45. Mr. BANTON, the author of the proposal, recalled that in paragraph 2 of the guidelines regarding the form and contents of reports submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.2), the Committee had pointed out that, through General Recommendation IV dated 1973, it had invited States parties "to endeavour to include in their reports under article 9 relevant information on the demographic composition of the population ...". Subsequently, the Committee had urged States parties to provide general information on their countries in accordance with the basic document which they had been supposed to prepare. In doing so, the Committee had omitted to draw the attention of States parties to the need to obtain demographic data. Furthermore, it happened that some States parties refrained from collecting information on the ethnic origin of their populations in their periodic censuses. Those States could be reminded that, if it was not possible for them to provide the data through censuses, it was permissible for them to inform the Committee of their demographic situation in another way. That was the purpose of the text which he was proposing that the Committee should insert after the first sentence in part II of the guidelines.

46. The draft amendment to the guidelines was adopted.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 3) (concluded)

Draft general recommendation on the establishment of national human rights commissions (concluded)*

47. Ms. SADIQ ALI, the author of the draft, said that the text had been prepared in pursuance of paragraphs 10 and 11 of Commission on Human Rights resolution 1992/54, entitled "National institutions for the promotion and

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* Resumed from the 979th meeting.

protection of human rights". She proposed that paragraph 1 (a) of the draft should be amended by replacing the words "to protect against discrimination in the enjoyment of human rights, as expressly set out ..." by the words "to promote respect for the enjoyment of human rights, without any discrimination, as expressly set out ...". She also proposed that the beginning of paragraph 2 should be modified to read: "2. *Further recommends* that, where such commissions have been established, they should be associated with the preparation of reports and possibly included in ...".

48. *Mr. SHAHI* pointed out that the draft gave States parties full freedom to determine the field of competence of the national commissions which the recommendation called upon them to establish.

49. *Mr. de GOUTTES*, *Mr. DIACONU*, *Mr. GARVALOV*, *Mr. SHAHI* and *Mr. WOLFRUM* expressed their approval of the draft recommendation.

50. *The CHAIRMAN* said it was his understanding that the Committee wished to adopt the draft general recommendation concerning the establishment of national commissions on human rights, as orally amended.

51. *It was so decided*.*

ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-SEVENTH SESSION (agenda item 2) (*concluded*)**

(a) ANNUAL REPORT SUBMITTED BY THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 9, PARAGRAPH 2, OF THE CONVENTION (GENERAL ASSEMBLY RESOLUTION 47/79);

(b) EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (GENERAL ASSEMBLY RESOLUTION 47/111)

Relations with other bodies

52. *Mr. WOLFRUM* introduced a report which he had produced on the work of the Human Rights Committee at its forty-third to forty-fifth sessions. The document, published without a symbol and in English only, had just been distributed to members of the Committee. At the end of the third paragraph, which dealt with the report submitted by Burundi to the Human Rights Committee, the word "agreed" should read "argued". The work of the

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* The final text of this draft will be reproduced in the Committee's report on the work of its forty-second session.

** Resumed from the 979th meeting.

Human Rights Committee and of the Committee on the Elimination of Racial Discrimination often had points in common, and even overlapped. The Committee on the Elimination of Racial Discrimination could derive valuable information from the reports of the Human Rights Committee, particularly with regard to the consideration of communications, which was the subject-matter of part III of his report.

53. Mr. DIACONU noted that he should have reported in the same way to the Committee on the Elimination of Racial Discrimination on the work of the Committee against Torture. Unfortunately, he had received no information from that body, although he had sent a request to its Secretary. He was therefore unable to report as desired at the current session.

54. Mr. WOLFRUM stated that he personally had approached the Secretary of the Human Rights Committee, who had supplied him with documentation. He also pointed out that the Conference on Security and Cooperation in Europe (CSCE) had just created a post of High Commissioner for Minorities, whose functions would have points in common with the mandate of the Committee. He had met him personally and had heard him express a desire for contacts with the Committee. It would therefore be useful to appoint one of the Committee's members to establish such contacts.

55. Mr. JOHNSON (Secretary of the Committee) said that the Secretary of the Committee against Torture had in fact received Mr. Diaconu's request and had sent some documentation by post, presumably to Romania.

56. Mr. YUTZIS said that he had been present at the past three sessions of the Commission on Human Rights and had followed the Commission's discussions on subjects of interest to the Committee. In 1992 he had distributed a report on the work of the Commission's forty-eighth session. Without submitting a report of that kind at the current session of the Committee, he wished to point out that it was essential that the Committee should be informed of the Commission's work on questions of concern to it, firstly because that work was a source of very useful information for its own work, secondly because it indicated to the Committee criteria to be followed in its methods of work, and thirdly because the Committee could thus have an opportunity of making known its own perspective, which could also serve as an example. Arrangements therefore had to be made for regular contacts to be maintained with the Commission. In addition, he considered it very useful to establish special links with the CSCE High Commissioner for Minorities, as Mr. Wolfrum had suggested. He also requested Mr. Ferrero Costa to maintain contacts with the Sub-Commission on Prevention of Discrimination and Protection of Minorities and to take steps to arrange for the holding of joint meetings, since the Sub-Commission's session coincided with the Committee's summer session.

57. Mr. de GOUTTES informed the Committee that, in conformity with the mandate conferred upon him, he had established contact with the Council of Europe and had transmitted to it on the Committee's behalf documentation on the campaign against racism, intolerance and xenophobia. For its part, in December 1992 the Human Rights Division of the Council of Europe had sent him some documentation on those issues for distribution to the Committee. The documentation included a text on the Council of Europe's contribution to the

CSCE's Working Group on Tolerance (Warsaw, 16-20 November 1992), which brought together in one document contributions made by the Council of Europe with regard to the role of educational and cultural institutions, the role of local authorities, and legal questions in matters concerning the campaign against intolerance.

58. On 11 February 1992 he had also met with the European Parliament's committee on the campaign against racism and xenophobia, to which he had transmitted documentation emanating from the Committee and from which he had received information published in the monthly magazine Les échos du Parlement européen. On 25 December 1992, the Economic and Social Committee of the European Communities had adopted a resolution on racism, xenophobia and religious intolerance for the meeting of the Council of Heads of State and Government held at Edinburgh on 11 and 12 December, which had dealt with the question. Moreover, further to a European Parliament resolution of July 1991, Mr. de Gucht, a Belgian Deputy to the European Parliament, had been requested to prepare a report on the human rights situation in the European Community, which had subsequently been adopted. Among the subjects dealt with in the report were measures to combat racism, including a European media campaign against intolerance, sustained measures to combat poverty, and the need to put an end to discrimination based on nationality and to political discrimination. Another European Deputy, Mr. de Picolli, from Italy, had submitted a report on racism and the rise of extreme right-wing movements.

59. Finally, mention should be made of the work of the "Migrants' Forum" of the European Communities, presided over by Mr. Mukherjee. The Forum was an independent organization but had been created on the initiative of the European Parliament and was supported by it; its primary objective was the appointment of a commissioner for racial affairs and the preparation of a Community directive to that effect. He would be following the work of the Forum and would report again on those activities of the Council of Europe and the European Communities that were of interest to the Committee at its next session.

60. Mr. FERRERO COSTA said he was glad that Mr. Yutzis was able to submit every year written or oral reports on the work of the Commission on Human Rights as a result of the fact that the Commission's session coincided with the Committee's winter session. He himself had no written report on his contacts with the Sub-Commission on Prevention of Discrimination and Protection of Minorities, but in future he would be able to submit such a report; in the meantime he would take steps, as Mr. Yutzis had suggested, with a view to arranging a joint meeting between the Sub-Commission and the Committee. The agenda for the meeting would be determined at the appropriate time.

61. Mr. BANTON stressed the importance of contacts with CSCE and expressed the hope that a role would be played in that connection by Mr. Rechetov and Mr. Garvalov, who were acquainted with the matter. He, too, was very much in favour of a joint meeting with the Sub-Commission. Also, he suggested that contacts should be established with the Committee on the Elimination of Discrimination against Women, which had adopted recommendations of potential interest to the Committee on the Elimination of Racial Discrimination.

Finally, he hoped that at the August session there would be a discussion on how the Committee had reacted to the reports from the former Yugoslavia in the past few years. It would be desirable for the discussion to take place in the afternoon of the first day of the session. The Committee might request Mr. Garvalov to prepare an introduction to the discussion.

62. Mr. YUTZIS supported the suggestions which Mr. Banton had just made concerning the holding of a discussion on the reports from the former Yugoslavia and liaison with CSCE. He, too, requested that the Committee authorize Mr. Ferrero Costa to prepare a joint meeting with the Sub-Commission.

63. Mr. DIACONU considered the Mr. Rechetov would be able to establish the desired contacts with the CSCE High Commissioner for Minorities. He was also in favour of Mr. Ferrero Costa having contacts with the Sub-Commission and of Mr. Garvalov introducing a discussion on the reports from the former Yugoslavia. Furthermore, he hoped that the Secretariat would compile the recommendations on the submission of reports which had been adopted at the current session and transmit them to States in good time.

64. The CHAIRMAN said that, if there was no objection, he would take it that the Committee approved the oral and written reports which had been presented to it on relations with other bodies. It was also his understanding that the Committee approved the suggestions that Mr. Rechetov be requested to establish contact with the CSCE High Commissioner for Minorities, that Mr. Ferrero Costa be authorized to take steps to arrange a joint meeting with the Sub-Commission, that a debate, introduced by Mr. Garvalov, be held at the next session on the subject of the reports from the former Yugoslavia, and that contacts be established with the Committee on the Elimination of Discrimination against Women.

65. It was so decided.

Report on the technical meeting of experts on minorities (E/CN.4/1993/85)

66. Mr. WOLFRUM drew the Committee's attention to the report prepared by Mr. Eide entitled "Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities" (E/CN.4/Sub.2/1992/37/Add.1 and Add.2) and to the note by the Secretary-General on the technical meeting of experts on minorities (E/CN.4/1993/85) held at Geneva from 2 to 4 February 1993, in which he himself had participated. The meeting had also been attended by representatives of several specialized agencies, intergovernmental and non-governmental organizations and Governments.

67. The meeting had focused mainly on the treatment of minorities in different regions of the world with the aim of finding peaceful and constructive ways of solving conflicts in which minorities were involved (para. 7).

68. At the beginning of the meeting, Mr. Eide had stressed the serious destabilizing effects of the resurgence of ethno-nationalism. He had added that the necessary protection of minorities should not lead to the disintegration of States.

69. The affirmation made by the Secretary-General in paragraph 10 of his note, to the effect that "One cause of the aggravated ethnic conflicts today is to be found in the breakdown of some multi-ethnic federations and the disintegration of the balance between different ethnic groups prevailing under those federal systems" had not been unanimously endorsed by the participants. On the other hand, participants had agreed that "The new political situations ... have also been used in some places for irresponsible ethnic policies leading to an escalation of violence and counter-violence", and that "The parties to such conflicts eventually become helpless prisoners of their own violence and depend on the international community to restore law and order", as the Secretary-General affirmed in the same paragraph.

70. Participants had also examined in detail the problem of citizenship legislation at times of independence or restored independence, and some of them had stated that defective legislation in that regard could give rise to serious minority issues (para. 13).

71. It had also been observed that each individual had the right to identify himself or herself with a group of persons differing from the rest of society, with distinct socio-cultural, religious, linguistic or ethnic character, and that no person should be obliged to identify himself or herself with any particular group (para. 19). In that connection, the Committee had adopted a general recommendation covering the first part of that principle. Participants had also examined the administrative measures that could be taken to serve the interests of minorities, particularly certain forms of cultural, or even political, autonomy. Opinions had been very divided in that respect, both among the representatives of non-governmental organizations and among those of States.

72. Participants had reaffirmed that attention should be given to the serious problems faced by Gypsies (Roma) in many countries (para. 22).

73. The practice of ethnic cleansing had been unreservedly condemned and participants had emphasized that populations which had been forced to flee during periods of ethnic conflict should be entitled to return under conditions of safety (para. 23). In that connection, mention had been made of the urgent need to develop standards to regulate population transfers (para. 24). In his opinion, such regulation was quite unnecessary in so far as population transfers were prohibited. The idea had been mentioned in the Secretary-General's note at the insistent request of one expert.

74. It had been stated that the existence of minorities was not only the consequence of frontier changes but could also be due to movements of refugees, as was the case at present. It was primarily up to such refugees

themselves to decide whether they wished to integrate themselves or to preserve their cultural identity. The issue was very complex, since it involved a new category of minorities different from those known in the past.

75. Participants had taken note of the new mechanisms established to protect minorities. In that connection, the High Commissioner for Minorities who had just been appointed within CSCE had explained to participants what his responsibilities were.

76. Participants had stressed the need to teach tolerance, particularly ethnic tolerance, in order to reduce present tensions.

77. In conclusion, he considered that the Committee should give careful consideration to the final report which Mr. Eide was due to submit in August 1993.

Report on the work of the Working Group on Indigenous Populations

78. Ms. SADIQ ALI, reporting on the work of the Working Group on Indigenous Populations, a subsidiary organ of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, said that the draft declaration on indigenous rights was to be submitted to the General Assembly in 1994. The final report by Mr. Alfonso Martínez on the importance of treaties concluded between indigenous populations and States was due to be completed in 1993.

79. The Committee on the Elimination of Racial Discrimination helped to protect indigenous populations by requesting the States parties concerned, when they submitted their reports, to specify what measures they were taking to protect the indigenous populations living in their territories against all forms of discrimination. In order to facilitate the work of the Committee, States parties should indicate, in their reports, the demographic composition of their population.

80. The indigenous populations of States which had made the declaration provided for in article 14, paragraph 1, of the Convention (including Costa Rica, Ecuador, Peru, Sweden, Uruguay and Senegal) should be informed that they could apply to the Committee if they considered themselves to be victims of a violation of any of the rights set forth in the Convention.

81. Indigenous populations could also benefit from the provisions of article 4, paragraphs (a) and (b), according to which acts of discrimination must be declared punishable offences and racist organizations must be prohibited, and of the provisions of article 7, under which States parties undertook to adopt measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which led to racial discrimination.

82. The provisions of article 5 were all of the greatest interest for indigenous peoples. The Committee on the Elimination of Racial Discrimination had a duty, through its dialogue with States parties, to help to improve the lot of indigenous populations in the fields of health, housing, work and

education. It must also, as far as possible, help to preserve their ways of life and traditional cultures. The land question was of vital importance, since indigenous populations were often despoiled of their lands, their environment and way of life being thereby disrupted. Language also occupied a fundamental place in the preservation of cultural identity. The Committee must take an interest in all those matters.

83. Finally, in order to contribute effectively to the protection of the rights of indigenous populations, the Committee had to make the public aware of its activities.

84. Mr. DIACONU said that it would be possible to name countries other than those mentioned by Ms. Sadiq Ali in connection with article 14 of the Convention. It would therefore be appropriate either to mention all the countries concerned or to mention none at all.

85. Ms. SADIQ ALI replied that she had mentioned the countries in question because it had seemed to her that the problems there were particularly serious; however, she could agree to their names being deleted from the document which had been distributed to members of the Committee.

CLOSURE OF THE SESSION

86. The CHAIRMAN, recapitulating the work done by the Committee at its current session, said that the Committee had considered the reports of six States parties (Ukraine, Algeria, Qatar, Sudan, Ecuador and Poland) and that it had also examined the implementation of the Convention in three other States (Chad, Jamaica and Mozambique).

87. The Committee had considered 11 draft general recommendations. Seven had been approved, relating respectively to non-nationals, the training of law enforcement officers, succession of States, article 1, paragraph 1, of the Convention, article 4, article 9 and, finally, the establishment of national commissions. The other four draft general recommendations, dealing with segregation, public life, effectiveness and State policies, were still pending.

88. The Committee has also approved a basic document on the measures to be taken to prevent violations of the Convention, in particular early warning measures and urgent procedures.

89. It had considered two communications submitted under article 14 of the Convention and had adopted new rules of procedure designed to expedite the consideration of that kind of communication.

90. The Committee had also considered how it could contribute to the work of the World Conference on Human Rights and participate in the Third Decade to Combat Racism and Racial Discrimination.

91. It had adopted several important decisions: it had decided to study the situation in the former Yugoslavia, to examine the implementation of the Convention in various countries which were not submitting reports (including Rwanda, Burundi and Papua New Guinea) and to request the Minister for Foreign Affairs of the Federal Republic of Yugoslavia to supply some information on the treatment of a former member of the Committee, Mr. Vidas.

92. In conclusion, he thanked members of the Committee, the Secretariat and the non-governmental organizations for contributing to the success of the Committee's forty-second session, which he declared closed.

The meeting rose at 12.30 p.m.
